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Supreme Court, U.S.
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No.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1987
NO.

SIMON J. PINHAS, M.D.
Petitioner,
VS.
SUMMIT HEALTH, LTD., a corporation; MIDWAY HOSPITAL MEDICAL CENTER, a California general hospital; THE MEDICAL STAFF OF MIDWAY HOSPITAL MEDICAL CENTER, an unincorporated association; MITCHELL FELDMAN; AUGUST READER; ARTHUR N. LURVEY; RICHARD E. POSELL; JONATHAN I. MACY; JAMES J. SALZ; GILBERT PERLMAN; PEGGY FARBER; MARK KADZIELSKI; and WEISSBURG & ARONSON,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND APPENDIX

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QUESTIONS PRESENTED

1. Whether this case should be consolidated with *Patrick v. Burget*, 800 F.2d 1498 (9th Cir. 1986), *cert. granted* 108 S.Ct. 65 (1987), which contains identical issues that are raised in this Petition?

2. Whether the "State Action Doctrine", which provides medical peer review activity immunity from inflicted anti-trust damages, mandates a finding of "state action" for purposes of Civil Rights Act violations?

3. Whether in light of this Court's review of the applicability of the state action anti-trust exemption to medical peer review proceedings in *Patrick v. Burget*, 800 F.2d 1498 (9th Cir. 1986), *cert. granted* 108 S.Ct. 65 (1987), this Court should also define the meaning of "state action" under the Civil Rights Act?

4. Whether the Health Care Quality Improvement Act of 1986 is Congressional recognition that medical peer review activity is clothed with "state action" for purposes of Civil Rights Acts jurisdiction?

LIST OF PARTIES

The parties to this proceeding are petitioner, Simon J. Pinhas, M.D. and the respondents — Summit Health, Ltd., a corporation, Midway General Hospital, a California general hospital, the Medical Staff of Midway General Hospital, an unincorporated association; Mitchell Feldman, hospital administrator at Midway, August Reader, Arthur Lurvey, Richard Posell, Jonathan Macy, James Salz, Gilbert Perlman, Peggy Farber, Mark Kadzielski, and Weissburg & Aronson. The California Board of Medical Quality Assurance was named as a defendant in the District Court but was dismissed by agreement before a final judgment of the District Court.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND APPENDIX

OPINIONS BELOW

The opinion of the United States District Court for the Central District of California is not officially reported. A copy of the Reporter's Transcript of Proceeding is reprinted in Appendix 1.

JURISDICTION

The jurisdiction of the District Court in this action was based upon the Sherman Act, 15 U.S.C. § 1 and the Civil Rights Act, 42 U.S.C. §§ 1983, 1985 and 1988.

The jurisdiction of this Court to review the judgment of the District Court is invoked under 28 U.S.C. § 1254(1). Section 1254(1) expressly provides that this Court may assert its jurisdiction by certiorari either "before or after rendition of judgment" by a court of appeals. In addition, 28 U.S.C. § 2101(e) provides that "[a]n application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment." Therefore, jurisdiction is proper because the appeal is pending in the United States Court of Appeals for the Ninth Circuit from a final judgment of the District Court which dismissed petitioner's complaint. *Nixon v. Fitzgerald,* 457 U.S. 731 (1982); *United States v. Nixon*, 418 U.S. 683, 690-692 (1974).

The Court will review a case pending in the Court of Appeals upon a showing that the case is of such "imperative public importance as to justify deviation from normal appellate practice. . . ." Rule 18, Rules of the Supreme Court of the United States. This Court has held that that standard has been met when the identical question was before it in another case. *New Haven Inclusion Cases*, 399 U.S. 392, 418 (1970); *McCulloch v. Sociedad Nacional*, 372 U.S. 10, 12 (1963); *Hannah v. Larche*, 363 U.S. 420, 422 n. 3 (1960); *United States v. Thomas*, 361 U.S. 950 (1960); *McElroy v. Guargliardo*, 361 U.S. 281, 283 (1960); *Taylor v. McElroy*, 360 U.S. 709 (1958); *Reed v. Covert*, 354 U.S. 1, 5 (1957); *Graham v. Goodcell*, 282 U.S. 409, 411-12 n. 2 (1931); *White v. Mechanics Securities Corp.*, 269 U.S. 283, 299 (1925).

This Court should grant review for this Ninth Circuit case because it has already issued a writ of certiorari to review identical questions that is before it in the Ninth Circuit case of *Patrick v. Burget*, No. 86-1145. In T*aylor, supra,* this Court granted certiorari while appeal was pending because *Taylor* was pending in the same Circuit that had previously decided *Greene v. McElroy*, 360 U.S. 474 (1950), which involved essentially the same important constitutional issue, and because it was thought that the Court of Appeals would dispose of *Taylor* simply on the authority of its decision in *Greene.*

Thus, issuance of a writ of certiorari is proper because identical issues are raised in petitioner's appeal and the Ninth Circuit will dispose of these issues by reference to its decision in *Patrick v. Burget, supra.*

STATEMENT OF THE CASE

Petitioner requests that this Court issue a writ of certiorari to the Ninth Circuit in this case and consolidate this case with *Patrick v. Burget, supra.*

The undisputed facts of this case illustrate the whipsaw effect of the inconsistent applications of the State Action Doctrine. After defendant Midway Hospital convened peer review proceedings against him, Dr. Pinhas brought an action in Federal District Court, Appendix 2, against the hospital, its administrators, physicians-competitors and its attorneys under both Section 1 of the Sherman Act, and Sections 1983, 1985, and 1988 of the Civil Rights Act. The District Court dismissed his entire

Complaint,[1] holding that the defendants' activities fit within the state action exemption barring the Sherman Act claim, but that "state action" for anti-trust purposes was not "state action" for Civil Rights Act purposes. Appendix 1, p. 10. Further, the court held that petitioner had failed to show that the actions of a private hospital, pursuant to an elaborate statutory and common law scheme, were sufficient to establish federal jurisdiction under 42 U.S.C. §§ 1983, 1985 and 1988.

REASONS FOR GRANTING THE WRIT

1. Because of this Court's issuance of a writ of certiorari in *Patrick v. Burget*, 800 F.2d 1498, *cert. granted* 108 S.Ct. 65 (1987), the Court should grant the petition for writ of certiorari and the motion to consolidate with *Patrick v. Burget* because the issues posed by this case are identical to the issues in *Patrick v. Burget.*

In *Patrick*, the Ninth Circuit reversed a jury verdict and an award of substantial damages, based upon proven antitrust violations arising out of abuse in a peer review process involving Dr. Patrick. The basis for the reversal was that the peer review proceeding was "*state action*" and as such was immune from anti-trust damage awards. The Court said: "[P]eer review activities at the hospital . . . were mandated by statute and are exempt from federal antitrust liability under the state action doctrine." *Patrick* at 1505.

In order to determine if the Oregon statutory scheme was "state action", the Ninth Circuit engaged in the following analysis. Counsel in this case has added foot-

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[1]The Court granted defendants' motion to dismiss under both 12(b)(1) and 12(b)(6) Federal Rules of Civil Procedure, Appendix 4.

notes to the following quotation to show that the Oregon and California statutory schemes, as far as they go, are not distinguishable:

> "The peer review process is supervised actively by the state. To maintain licenses, health care facilities regularly must review privilege termination and restriction procedures to assure their conformity to applicable law. Or. Rev. Stat. §§ 441.030, 441.055 (3)(c).[2] When a health care facility terminates or restricts the privileges of a physician, it must promptly report to the BOME all facts and circumstances that caused the termination or restraint. Or. Rev. Stat. § 441.820(1).[3] Supervision by the Board, a state agency, is equivalent to supervision by the state. *Benson [v. Arizona State Board of Dental Examiners]*, 673 F.2d at 278. The hospital's decisions terminating or restricting privileges are also judicially reviewable. Oregon courts have reviewed adverse privilege decisions to determine if they were made in good faith pursuant to fair procedures and

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[2]The California Administrative Code § 70703(a) requires that the Hospital "shall have an organized medical staff responsible to the governing body for the adequacy and quality of the medical care rendered to patients in the hospital." According to Title 22, California Administrative Code, § 70701(a)(1)(F), a Hospital must have a governing body which must adopt written bylaws in accordance with legal requirements and its community responsibility which shall include "self-government by the medical staff with respect to the professional work performed in the hospital. . . ." The governing body shall "assure that the medical staff bylaws, rules and regulations are subject to governing body approval . . ., and these bylaws shall include an effective formal means for the medical staff, as a liaison, to participate in the development of all hospital policy." *Id.* at (8), (9).

[3]See, California Business and Professions Code § 805 et seq., Appendix 2, pp. 24-26.

were supported by the facts.[4] [Citations omitted]; *see also* Or. Rev. Stat. 41.675 (5) (rule that peer review proceedings confidential inapplicable in judicial proceedings challenging adverse privilege decision).[5] The combination of internal review by the hospitals, review by the BOME, and review by the courts constitutes adequate supervision."[6] *Patrick* at 1506.

In addition to the similarity between the statutory schemes, petitioner alleges the same type of bad faith behavior proved in *Patrick v. Burget, supra.* (See petitioner's First Amended Complaint, Appendix 2.) For example, petitioner alleges in paragraphs 27-28, Appendix 2, pp. 8-9, the use of under-the-table payments in the guise of a consulting contract; in paragraph 29, Appendix 2, p. 9, summary suspension of medical staff privileges effectuated by Dr. Pinhas' competitors; in paragraph 38, Appendix 2, p. 12, the inclusion of competitors in the Judicial Review Committee; in paragraph 47, Appendix 2, pp. 13-14, use of biased hearing officers employed by respondent hospital and its law firm; in paragraph 61, Appendix 2, p. 17, the intimidation of petitioner's witnesses; and in paragraph 72, Appendix 2, p. 20, interference with petitioner's getting a copy of the transcript from respondent's captive court reporters. *Compare* findings in *Patrick v. Burget*, 800 F.2d 1498, 1504-1505.

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[4]See, California Code of Civil Procedure § 1094.5, Appendix 2, pp. 43-47.

[5]See California Evidence Code §§ 1156 and 1157, Appendix 2, pp. 48-50.

[6]The *Patrick* court also found it significant that Oregon provided "good faith immunity to participants in the peer review process. Or. Rev. Stat. § 41.675(4)", California does the same, see California Civil Code, § 43.7, Appendix 2, pp. 51-53.

The District Court, perceiving itself bound by *Patrick v. Burget*, dismissed the anti-trust portion of the complaint. Therefore, it is appropriate to issue the writ to review and to grant the Motion to consolidate this case with *Patrick* because an identical claim was barred for identical reasons.

2. This case presents an opportunity for this Court to examine whether civil rights "state action" is similar to or distinguishable from antitrust "state action". Paradoxically, petitioner's anti-trust claim was dismissed because there was "state action" and his Civil Rights Act claim was dismissed because he was *unable* to show sufficient "state action". The lower court said:

> "The Court recognizes the possibility of a claim that if there is or is not state action for the purposes of antitrust doctrine, then the same must hold for the Civil Rights claim. But that, of course, would buy into the logical fallacy of assuming that the use of some word or phrase in two different contexts conveys the same meaning in both of those context [sic]. It does not. *Ezpeleta versus Sisters of Mercy Health Corporation*, at 800 Fed.2d 119, 7th Circuit, 1986, demonstrates it does not." Reporter's Transcript of Proceedings, Appendix 1, p. 10.

Although the Seventh Circuit holds that civil rights state action does not have the same meaning as the antitrust state action, this Court has not addressed this important issue. Indeed, this Court has not even addressed the narrower issue of whether the peer review proceeding is state action for purposes of a civil rights claim.

As previously discussed, the District Court dismissed petitioner's anti-trust portion of the Complaint because it

felt bound by *Patrick v. Burget*, Appendix 1, p. 8.[7] Federal courts have addressed the issue that peer review proceedings are state action for purposes of antitrust immunity. *Sarin v. Samaritan Health Center*, 813 F.2d 755 (6th Cir. 1987); *Marrese v. Interqual, Inc.*, 748 F.2d 373 (7th Cir. 1984), *cert. denied*, 472 U.S. 1027 (1985); *Miller v. Indiana Hospital*, 660 F.Supp. 250 (W.D. Pa. 1987); *But see*, *Tambone v. Memorial Hospital*, 825 F.2d 1132 (7th Cir. 1987).

However, the related question of whether the peer review proceeding is state action for purposes of a civil rights claim has received scant attention. *Ezpeleta v. Sisters of Mercy Health Corporation*, 800 F.2d 119 (7th Cir. 1986).

Although the Oregon and California statutory schemes, as far as they go, are identical, California does differ in one significant and important aspect, in that California reports and disseminates to hospitals and medical as-

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[7]No reported California or federal decision has ever determined whether the compulsory features of Sections 805 and 805.5 of the Business and Professions Code invest peer review proceedings with sufficient attributes of state action.

There is, however, a complex body of California law which allows judicial review of private peer review actions because the proceeding is treated as quasi-judicial. Section 1094.5(d) of California Code of Civil Procedure; *Anton v. San Antonio Community Hospital*, 19 Cal.3d 802, 140 Cal.Rptr. 442 (1977); *Pinsker v. Pacific Coast Society of Orthodontists*; 12 Cal.3d 541, 116 Cal.Rptr. 245 (1974); *Strumsky v. San Diego County Employees Retirement Association*, 11 Cal.3d 28, 112 Cal.Rptr. 805 (1974); *Bixby v. Pierno*, 4 Cal.3d 130, 93 Cal.Rptr. 234 (1971).

sociations the results of any peer review proceeding adverse to individual physicians.[8]

Civil rights jurisdiction exists in this case because California Business and Professions Code § 805, et seq., Appendix 2, pp. 24-26, requires the reporting and dissemination of peer review results and is structurally analogous to the Wisconsin posting statute condemned in *Wisconsin v. Constantineau*, 400 U.S. 433, 507 (1971).

In this case, petitioner's civil rights claims are bottomed on the inadequacy of hospital procedures that deny, *inter alia*, the right to counsel, and which ignore the fact that the hospital can unilaterally choose a biased hearing officer. California's reporting and dissemination requirements, like Wisconsin's posting requirements, deny federally protected rights without an adequate due process hearing.

3. The interplay of the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11111, *et seq.*, ("HCQIA") on petitioner's claims further emphasizes the need for granting this petition for a writ of certiorari. HCQIA provides in pertinent part:

> "(b) ADEQUATE NOTICE AND HEARING — A health care entity is deemed to have met the adequate notice and hearing requirement . . . if the following conditions are met . . .
>
> (C) in the hearing the physician involved has the right —

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[8]This California distinction, reporting of peer review results, has been recently adopted by the Congress in the enactment of the Health Care Quality Improvements Act of 1986, 42 U.S.C. § 11111, et seq. HCQIA was applicable to federal anti-trust claims on November 14, 1986 and to state causes of action in 1989, § 11111(c).

(i) to representation by an attorney or other person of the physician's choice, . . ." 42 U.S.C. § 11112(b)(3)(c)(i).

The section by section analysis of the Act provides:

"For a professional review action to qualify for protection from damages it must be taken:

In the reasonable belief that it is in furtherance of quality care;

After a reasonable effort to obtain facts;

After adequate due process;

In the reasonable belief that the action was warranted by facts known.

Characteristics of due process that would be deemed adequate:

Notice of action, with reasons specified;

Right to hearing with notice of time, place, date, and witnesses to testify;

Hearing held before arbitrator or hearing officer or panel not in direct economic competition with physician involved;

Right to representation, to copies of the record, to call and examine witnesses, to present evidence, and submit written statement;

Right to receive written recommendation and decision.

Due process can be different in health emergencies or under other applicable law." (Emphasis added.) The Committee on Energy and Commerce, H.R. No. 903, 99th Cong. 2nd sess. 6, reprinted in 1986 U.S. Code Cong. and Admin. News 6384, 6388-6389.

The Committee's views state that:

> "The *due process requirement* can always be met by procedures specified in subsection (b). If the procedures specified in that subsection are provided, the health care entity will be deemed to have met the *due process standard.* If other procedures are followed but are not precisely of the character spelled out in subsection 102(b), the test of 'adequacy' may still be met under other prevailing law." (Emphasis added.) *Id.* at 6393.

Thus, HCQIA requires a due process hearing, one important feature of which is the right to retained counsel. HCQIA makes it clear that what respondents did in this case was a violation of a federally protected right which is not immunized from either anti-trust review or federal civil rights review in the federal courts because it is done in bad faith. Thus, Congress was aware that a faulty hearing procedure would result in a damage action to redress these deprivations. We must assume Congress passed HCQIA so that it would be consistent with other enactments, such as the Civil Rights Act. This Court must clarify the confusion before there are inconsistent rulings on these issues.

CONCLUSIONS

Because the antitrust state action issue presented by this case is identical to that of *Patrick v. Burget*, petitioner requests this Court to issue the writ of certiorari. Unable to pursue his Sherman Act claim because of the Ninth Circuit's interpretation of an Oregon statutory scheme, nearly identical to California's, which deems the elaborate peer review procedure to be state action under the Sherman Act exemption, petitioner needs this Court's intervention prior to the hearing of his Ninth Circuit appeal.

Further, this Court should determine the interrelationship between state action for anti-trust purposes, state action for Civil Rights Act jurisdiction under Sections 1983, 1985 and 1988, and the implication of the Health Care Quality Improvements Act of 1986. The public policy behind the three implicated statutory schemes can and should be reconciled to protect the public, through the competition in the delivery of health service and basic civil rights in peer review proceedings. Only this Court, at this time, has the preeminent authority to accomplish this goal. Thus, petitioner, by separate motion, will ask that this Court consolidate this case with *Patrick v. Burget* so that all sides of the state action issue, the antitrust and the civil rights sides, can be fully heard.

In addition, petitioner will move separately to appear *amicus curiae* in *Patrick v. Burget* to present petitioner's anti-trust and civil rights positions and the interfacing of these claims.

DATED: December 30, 1987

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APPENDIX 1

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES + CALIFORNIA, MONDAY, SEPTEMBER 21, 1987

+ 10:00 A.M. SESSION

THE COURT: NO. 8, PINHAS.

MR. SILVER: LAWRENCE SILVER, YOUR HONOR, FOR THE PLAINTIFF SIMON PINHAS.

MR. WAXMAN: MARK WAXMAN FOR THE DEFENDANTS.

MR. SILVER: YOUR HONOR, THERE'S ALSO AN ADDITIONAL APPEARANCE.

THE COURT: OH. GO AHEAD.

MS. ROSENBERG: ALICIA ROSENBERG FOR THE PLAINTIFF, ALSO, MR. PINHAS.

THE COURT: THANK YOU. YOU FOLKS HAVE SEEN THE COURT'S NOTES. IF YOU'D LIKE TO BE HEARD, I'LL GIVE YOU UP TO FIVE MINUTES EACH. OF COURSE, THE MOVING PARTY MAY GO FIRST.

MR. WAXMAN: I THINK WE'LL SUBMIT ON THE TENTATIVE.

THE COURT: ALL RIGHT.

MR. SILVER: YOUR HONOR, IN LIGHT OF THE COURT'S TENTATIVE, I BELIEVE I DO HAVE A LABORING OAR.

THE COURT: I THINK YOU'RE RIGHT.

MR. SILVER: IF I MAY FIRST ADDRESS THE ANTITRUST ISSUE, AND THAT IS, UNLESS I'M WRONG, I THINK IT'S FRAMED IN THE TENTATIVE WHETHER OR NOT *PATRICK VERSUS BURGET* SURVIVES THE ENACTMENT OF THE HEALTH CARE QUALITY IMPROVEMENT ACT. IT IS OUR POSITION THAT *PATRICK VERSUS BURGET* DOES NOT SURVIVE THE HEALTH CARE QUALITY IMPROVEMENT ACT AND THAT THERE IS A SPECIFIC CONGRESSIONAL POLICY REASON WHY THE COURT SHOULD BE MOVED TO CHANGE THE TENTATIVE AFTERNOON RULING IN THAT FASHION.

THAT IS, IF YOU EXAMINE, AS I'M SURE YOUR HONOR HAS, ALL THE CONGRESSIONAL CONCERNS ABOUT, ON THE ONE HAND, FAIRNESS TO COUNSEL AND FAIRNESS TO THE PHYSICIAN WHO IS UNDER REVIEW, AS COMPARED TO PROVIDING FOR A NATIONAL REPOSITORY OF INFORMATION REGARDING PHYSICIANS WHO PERFORM IN A FASHION LESS THAN SATISFACTORY, CONGRESS AND THE GREAT THRUST OF THE MATTER, IN ADDITION TO PROVIDING THE ANTITRUST IMMUNITY, WAS TO PROVIDE FOR THIS REPOSITORY.

NOW, IF THE COURT HOLDS, THAT IS THE JUDICIAL SYSTEM HOLDS, THAT IN STATES SUCH AS ILLINOIS, INDIANA, NEW YORK, PENNSYLVANIA, CALIFORNIA, AND WASHINGTON, AS A BEGINNING, BECAUSE THAT'S WHERE WE HAVE DECIDED CASES, THAT THERE IS NO — THAT ALL OF THESE TYPES OF PROCEEDINGS ARE STATE ACTIONS, THEN DEFENDANTS, OR IN THIS CASE, AND DEFENDANTS IN OTHER SIMI-

LAR CASES, CAN SAY, "WE NEED NOT COMPLY AT ALL WITH THE HEALTH CARE QUALITY IMPROVEMENT ACT. WE NEED NOT GIVE DUE PROCESS. WE NEED NOT GIVE INFORMATION TO THE NATIONAL REPOSITORY. WE NEED NOT BUY IN, BECAUSE WE ALREADY HAVE AN ABSOLUTE, COMPLETE IMMUNITY UNDER THE STATE ACTION DOCTRINE."

CONSEQUENTLY, IT SEEMS THAT — IT SEEMS, YOUR HONOR, THAT IF THE PURPOSE OF CONGRESS WAS TO LET SUCH DEFENDANTS BUY INTO ANTITRUST IMMUNITY, IN ORDER TO BUY IN, THEY HAD TO DO CERTAIN THINGS. THEY HAD TO, ONE, CONDUCT HEARINGS FAIRLY, WHICH THEY HAVE NOT DONE HERE. THEY, TWO, HAD TO PROVIDE A CERTAIN DEFENSE IN THOSE HEARINGS, CERTAIN DEFENSE OBLIGATIONS, WHICH HAS NOT BEEN DONE HERE. AND LASTLY, IN ORDER TO BUY IN, THEY HAD TO MAKE REPORTS TO THE NATIONAL CLEARING HOUSE.

IF THE STATE ACTION DOCTRINE PROTECTS THEM FULLY, WITHOUT ANY INVOLVEMENT WITH HCQIA, THEN THERE IS NO REASON FOR THEM TO BUY IN. THEY CAN CONTINUE TO GIVE HEARINGS THAT LACK DUE PROCESS. THEY CAN CONTINUE TO NOT PROVIDE INFORMATION TO THE NATIONAL REPOSITORY. AND THEREFORE, BY SAYING THAT THE STATE ACTION DOCTRINE, AS ARTICULATED IN *PATRICK VERSUS BURGET,* SURVIVES HCQIA IS TO INTERFERE WITH CONGRESSIONAL INTENT.

IN ADDITION, YOUR HONOR, AS I HAND-DELIVERED TO YOUR HONOR, AS WELL AS OPPOSING

COUNSEL, A CASE ON FRIDAY, *TAMBONE VERSUS MEMORIAL HOSPITAL,* THE 7TH CIRCUIT CASE, AND THE ONLY CASE THAT MENTIONS HCQIA, IN THAT CASE THE COURT FOUND, AT LEAST ON THE BASIS OF THAT RECORD, THAT THERE WERE NOT SUFFICIENT FACTS TO DETERMINE WHETHER OR NOT THE STATE ACTION DOCTRINE APPLIES.

SINCE *MARRESE* IS THE SEMINAL CASE OUT OF THE 7TH CIRCUIT, IN WHICH IT SAYS THE STATE ACTION DOCTRINE APPLIES, OF COURSE *PATRICK* RELIES HEAVILY ON *MARRESE,* THAT THE 7TH CIRCUIT NOW SAYS THAT YOU HAVE SOME FACTUAL SHOWING AS TO WHETHER OR NOT THE HAND OF THE STATE IS SUFFICIENTLY INVOLVED IN CONNECTION WITH THE MATTER.

YOUR HONOR'S TENTATIVE RULING WOULD MEAN THAT IN LIGHT OF THE ALLEGATIONS OF THE COMPLAINT, BUT ON THE ALLEGATIONS OF THE COMPLAINT, YOUR HONOR, IT WOULD DETERMINE THAT THERE IS AN ABSOLUTE IMMUNITY AS A MATTER OF LAW WITHOUT ANY FACTUAL SHOWING BY THE DEFENDANTS.

CONSEQUENTLY, I THINK FOR TWO REASONS YOUR HONOR SHOULD, ONE, DETERMINE THAT *PATRICK VERSUS BURGET* DOES NOT SURVIVE HCQIA, AND, TWO – AS WELL AS THE STATUTORY LANGUAGE; AND TWO, BECAUSE THERE NEEDS TO BE A FACTUAL SHOWING. IF I NOW MIGHT ADDRESS MYSELF TO THE CIVIL RIGHTS ACTS, YOUR HONOR.

THE COURT: YOU EVER A MINUTE LEFT.

MR. SILVER: THAT IS A SHAME, YOUR HONOR, BECAUSE I THINK THAT IT IS VERY IMPORTANT IN TERMS OF —

THE COURT: YOU HAVE A MINUTE LEFT, IN ANY EVENT.

MR. SILVER: I'M SORRY?

THE COURT: YOU HAVE A MINUTE LEFT.

MR. SILVER: THANK YOU, YOUR HONOR.

IF WE GO TO THE OLD NOTIONS OF WHAT THE CIVIL RIGHTS ACT WAS SUPPOSED TO DO, YOU TAKE A LOOK AT THE KU KLUX KLAN GOING TO THE HOUSE OF A MINORITY AND SAYING, "I'M A SHERIFF. COME WITH ME," THAT A STATE ACTOR UNDER THE OLD CIVIL RIGHTS ACT AND THE CURRENT CIVIL RIGHTS ACT IS A PERSON WHO CLAIMS AUTHORITY UNDER COLOR OF STATE LAW. THAT IS ALSO THE RULE, AND CONSEQUENTLY YOUR HONOR'S DETERMINATION THAT THESE ARE NOT STATE ACTORS WITHIN THE MEANING OF THE CIVIL RIGHTS ACT, I THINK WOULD — THERE IS A TOTALLY PRIVATE ACTION, QUOTE, "UNDER COLOR OF STATE LAW."

IN THE CASE THAT BOTH PARTIES RELY UPON, *LUGAR VERSUS EDMONDSON OIL*, THERE A PERSON ASKED THE SHERIFF TO DO SOMETHING. A PRIVATE PERSON ASKED THE SHERIFF TO DO SOMETHING. AND THAT PRIVATE PERSON WAS HELD TO BE IN VIOLATION AS A STATE ACTOR IN VIOLATION OF THE CIVIL RIGHTS ACT.

FURTHER, AS WE HAVE CITED, BOTH IN *WISCONSIN VERSUS CONSTANTINEAU,* AS WELL AS *JOHN MARSHALL VERSUS SAWYER,* THERE WERE PRIVATE PARTIES INVOLVED IN THE STATE ACTION PROCESS, AND THAT WOULD BE SUFFICIENT CONDUCT UNDER THE THREAT OR COLOR OF STATE LAW TO BRING THEM WITHIN THE STATE ACTION DOCTRINE.

THE COURT: THANK YOU MR. SILVER.

MR. SILVER: THANK YOU, YOUR HONOR.

THE COURT: COUNSEL WISH TO RESPOND?

MR. WAXMAN: JUST BRIEFLY, YOUR HONOR. FIRST, THE HEALTH ACT CITED OBVIOUSLY DOESN'T APPLY BECAUSE OF THE DATE INVOLVED AND THE EXEMPTION WHICH THEY FAILED TO POINT OUT, BOTH OF THOSE POINTS. THE MEDICAL STAFF CASE, *PATRICK,* STILL IS THE LAW OF THE 9TH CIRCUIT. AND OF MOST INTEREST IS THEY NEVER CITE *EZPELETA,* THE LEADING CASE THAT THE COURT CITED ITSELF THE FIRST TIME AROUND.

SO NOTHING REALLY HAS CHANGED THIS TIME FROM LAST TIME, AND I THINK THE COURT'S TENTATIVE SHOULD STAND.

THE COURT: ALL RIGHT. WELL, FIRST OF ALL, AS TO THE ANTITRUST CLAIM, IT SEEMS TO THIS COURT THAT IMMUNITY DOES EXIST OF NECESSITY, AND OF NECESSITY IT MUST. IT'S CLEAR TO THE COURT THAT, AT LEAST IN CALIFORNIA, HOSPITALS ARE AMONG THE MOST REGULATED INSTITUTIONS. THAT'S MADE CLEAR BY THE PLEADING IN THIS CASE, EVEN IF THE COURT DIDN'T BOTHER PICKING UP THE CALIFORNIA

ADMINISTRATIVE CODE AND THE CALIFORNIA CODES THEMSELVES.

THAT'S BECAUSE THE COURTS IN THIS STATE, AND PROPERLY SO, AND THE LEGISLATURE OF THIS STATE, DESIRE TO HAVE A VERY HIGH QUALITY MEDICAL CARE FOR THE CITIZENS OF CALIFORNIA. THE REGULATORY SCHEME INCLUDES, OF COURSE, THE BOARDS OF MEDICAL EXAMINERS, BOARDS TO EXAMINE THE NURSES, THE B.M.Q.A., PEER REVIEW COMMITTEES, AND A GOOD DEAL OF ADDITIONAL SUPERVISION.

THE POLICIES ARE FURTHERED, ALSO, THROUGH COMMON LAW PRINCIPLES WHICH HOLD HOSPITALS LIABLE FOR THE TORTS OF THEIR MEDICAL STAFF UNDER MANY CIRCUMSTANCES. IN ADDITION, OF COURSE, CALIFORNIA HAS ENACTED A NUMBER OF IMMUNITY STATUTES TO PROTECT THE PEOPLE WHO PARTICIPATE IN THE PEER REVIEW PROCESS AND AMONG THOSE, OF COURSE, ARE CALIFORNIA CIVIL CODE 43.7 AND 43.8, 47-2 — AND HAS ALSO ENACTED REPORTING LAWS SO THAT THE BOARDS CAN ACCUMULATE INFORMATION AND THEREBY ATTEMPT TO PROTECT THE PUBLIC.

IN *MARRESE VERSUS INTERGARD, INC.*, AT 748 FED. 2D 373, THE 7TH CIRCUIT CASE REFERRED TO HERE, 1984 CASE, THE COURT DID CONSIDER THE APPLICATION OF THE STATE ACTION DOCTRINE IN A PRIVATE HOSPITAL SETTING UNDER LAWS QUITE SIMILAR TO CALIFORNIA'S, AND IT CONCLUDED THAT THE ANTITRUST LAWS DID NOT APPLY.

THAT COURT ALSO RECOGNIZED THE DILEMMA THAT'S IMPOSED UPON HOSPITALS AND THEIR GOVERNING BOARDS AND THEIR STAFFS BY THE EXPECTATIONS OF OUR SOCIETY. THOSE INDIVIDUALS ARE PLACED BETWEEN THE SCYLLA OF SUITS BY INJURED PATIENTS AND THE CHARYBDIS OF SUITS BY DISGRUNTLED DOCTORS WHO ARE DENIED OR TERMINATED FROM PRIVILEGES.

THE STATES HAVE TRIED TO GIVE SOME PROTECTION AGAINST THIS. AND IT SEEMS TO THE COURT IT WOULD BE MOST INAPPROPRIATE FOR THE COURT TO NOW DETERMINE THAT THESE ACTORS ARE TO BE THREATENED WITH ANTITRUST LIABILITY WHEN THEY'RE WORKING WITHIN A REVIEW PROCESS.

BY THE WAY, THAT VERY PROCESS DOES PROVIDE, AT LEAST UNDER CALIFORNIA STATE LAW, FOR ULTIMATE REVIEW BY THE COURTS OF THE STATE SO THAT A PROPER CONTROL CAN BE KEPT OVER THE DAMAGE THAT COULD BE CAUSED BY INAPPROPRIATE ACTIONS. AND AS COUNSEL KNOW, THAT APPEARS IN C.C.P. 1094.5. THE 9TH CIRCUIT APPEARS TO BE IN AGREEMENT WITH THAT APPROACH, AS SHOWN BY *PATRICK VERSUS BURGET.* AT 800 FED. 2D 1498, 9TH CIRCUIT, 1986.

NOR DOES THE COURT THINK THAT THE RECENT LEGISLATION BY CONGRESS, ASSUMING IT APPLIES TO THIS CASE, WAS INTENDED TO CUT BACK ON THE ANTITRUST IMMUNITY AND THEREFORE TO MAKE IT EASIER TO SUE PEER REVIEW PARTICIPANTS IN HOSPITALS IN STATES LIKE OREGON AND CALIFORNIA WHICH

ALREADY HAVE COMPREHENSIVE LAWS REGULATING THIS AREA.

THE GENESIS AND THE HISTORY OF THAT LEGISLATION SUGGESTS TO THIS COURT AN INTENT TO PROVIDE ADDITIONAL SAFE HARBOR PROTECTION FOR THOSE PERSONS AND ENTITIES AND NOT LESS PROTECTION. THE RECENT CASE THE COURT'S BEEN CITED TO, THE COURT WILL NOTE, DID INDICATE THAT IN THE STATE THERE CONSIDERED, THE 7TH CIRCUIT WAS NOT DEALING WITH LAWS LIKE THOSE THAT ARE ENFORCED AS THEY ARE IN CALIFORNIA, AS OPPOSED TO WHAT IT WAS DEALING WITH IN *MARRESE*.

THE LONG AND THE SHORT OF IT IS THAT PUBLIC POLICY MAKES IT QUITE CLEAR THAT PEOPLE WHO PARTICIPATE IN THE ASSURANCE OF MEDICAL QUALITY SHOULD BE PROTECTED FROM HAVING TO FACE ANTITRUST LAWSUITS SUCH AS THIS ONE. AND MOST COURTS AND MOST LEGISLATIVE BODIES WHO HAVE ADDRESSED THE ISSUES HAVE FOUND THAT, FOR ONE REASON FOR OTHER.

IT SEEMS QUITE APPROPRIATE IN THIS CASE IF THE STATE ACTION DOCTRINE CONTINUES AS IT HAS IN THE PAST AND THE CONGRESSIONAL LEGISLATION BE READ AS CONFERRING THE ADDITIONAL PROTECTION, AND INDEED TO TAKE THE CASE LIKE THE ILLINOIS CASE, IT MAY INDEED CONFER PROTECTION IN STATES WHICH HAVE NO OTHER PROCESS FOR PROTECTION OF THEIR OWN, AS OPPOSED TO THOSE SUCH AS OREGON AND CALIFORNIA.

AS TO THE CIVIL RIGHTS ACTION, HERE AGAIN, THE COURT SEES NO CAUSE OF ACTION SPELLED OUT. SIMPLY PUT, NO CIVIL RIGHTS CONSPIRACY CAN BE SHOWN, AS THERE'S NO ACTION OF THE STATE THAT IS IMPLICATED IN THE DEEDS OF THESE DEFENDANTS.

THE COURT RECOGNIZES THE POSSIBILITY OF A CLAIM THAT IF THERE IS OR IS NOT STATE ACTION FOR THE PURPOSES OF ANTITRUST DOCTRINE, THEN THE SAME MUST HOLD FOR THE CIVIL RIGHTS CLAIM. BUT THAT, OF COURSE, WOULD BUY INTO THE LOGICAL FALLACY OF ASSUMING THAT THE USE OF SOME WORD OR PHRASE IN TWO DIFFERENT CONTEXTS CONVEYS THE SAME MEANING IN BOTH OF THOSE CONTEXT. IT DOES NOT. AND *EZPELETA VERSUS SISTERS OF MERCY HEALTH CORPORATION*, AT 800 FED. 2D 119, 7TH CIRCUIT, 1986, DEMONSTRATES IT DOES NOT.

THERE'S NOTHING TO SUGGEST THE STATE HAS PARTICIPATED IN ANY WAY IN THE PEER REVIEW PROCESS OF THE PLAINTIFF. AND IT SEEMS TO THE COURT THAT IT ALMOST BORDERS ON THE FRIVOLOUS TO STATE THAT THE MERE FACT THAT THE RESULTS OF THAT PROCESS ARE TO BE REPORTED CONVERTS THE ACTIONS OF THE DEFENDANT INTO STATE ACTIONS FOR THESE PURPOSES. MOREOVER, IT SEEMS TO THE COURT RATHER INAPPROPRIATE TO RELY ON 43 U.S. CODE 1085 WHERE THERE'S NO RACIAL OR SIMPLY CLASS-BASED ANIMUS PLED OR SHOWN.

AS TO DECLARATORY RELIEF, THE COURT BELIEVES THE DEFENDANTS ARE CORRECT IN

THEIR CONTENTION THAT THEY ARE DECIDEDLY THE WRONG PEOPLE TO BE CONTESTING WHETHER THE CALIFORNIA OR FEDERAL REPORTING STATUTES ARE CONSTITUTIONAL. FIRST OF ALL, IT CAN BE SAID THAT THE CONTROVERSY IS HARDLY RIPE, SINCE AS THE COURT UNDERSTANDS IT, THE HOSPITAL PROCEEDING IS NOT YET FINAL AND CERTAINLY HASN'T MADE ITS WAY TO THE COURT.

SECONDLY AND MORE IMPORTANTLY, THE PLAINTIFF SEEKS TO REQUIRE THE DEFENDANTS TO DEFEND A STATE POLICY, AND NOW A FEDERAL POLICY, THAT REQUIRES THEM TO REPORT THEIR ACTIONS, OR ALLOWS THEM TO. IT WOULD BE STRANGE INDEED TO FIND THAT THE DEFENDANTS CARE ONE WAY OR THE OTHER ABOUT WHETHER THOSE POLICIES STAND OR FALL, AT LEAST IN THE SENSE THAT THEY MUST MAKE REPORTS.

IT CERTAINLY IS COUNTERINTUITIVE TO FIND THAT THOSE WHO ARE FORCED TO FILE REPORTS TO THE GOVERNMENT ARE THE ONES TO DEFEND THE GOVERNMENT'S DEMAND FOR THE REPORTS. IT SEEMS TO ME THAT IF THE PLAINTIFF WANTS A REVIEW OF CALIFORNIA'S POLICY OF REPORTING IN THIS REGARD, THEN THESE ARE NOT THE PARTIES TO SEEK IT FROM. NOR DOES IT SEEM TO THE COURT THAT IT'S JUST OR PROPER TO IMPOSE THE COST OF DEFENDING FEDERAL AND STATE POLICIES OF THIS NATURE UPON THESE PARTICULAR PARTIES, A NUMBER OF DOCTORS IN A PRIVATE HOSPITAL.

BEYOND THAT, THE COURT THINKS THAT IT WOULD BE QUITE INAPPROPRIATE TO PROCEED WITH DECLARATORY RELIEF IN THIS SORT OF SITUATION, WERE IT TO FIND IT OTHERWISE SHOULD DO SO, BECAUSE IT WOULD BE SIMPLY UNFAIR AND UNJUST TO THESE PARTIES. IT WOULD BE INEQUITABLE. AND THE COURT FEELS THAT IF IT HAD TO DO SO, IT WOULD SIMPLY EXERCISE ITS DISCRETION TO REFUSE TO GO FORWARD WITH DECLARATORY RELIEF AGAINST THESE INDIVIDUALS.

FOR ALL OF THOSE REASONS, THE MOTIONS TO STRIKE FOR FAILURE TO STATE A CAUSE OF ACTION SHOULD BE AND HEREBY ARE GRANTED. HOWEVER, CONSIDERING THE NATURE OF THE ISSUES INVOLVED HERE, THE COURT IS CERTAINLY NOT GOING TO IMPOSE RULE 11 SANCTIONS AT THIS TIME. THE COURT WILL AGREE THAT IN SOME WAYS ONE IS SURELY TEMPTED TO IMPOSE SUCH SANCTIONS, PARTICULARLY WHEN A PLAINTIFF SEEMS TO SIMPLY BE STRIKING OUT AT EVERYBODY IN SIGHT, INCLUDING EVEN THE DEFENDANTS' LAWYERS, IN AN ATTEMPT TO DRAG EVERYONE HE CAN THINK OF INTO A LAWSUIT.

NEVERTHELESS, IN THE POSTURE OF THIS PARTICULAR CASE AT THIS TIME, THE COURT IS NOT ABLE TO FIND THAT RULE 11 SANCTIONS SHOULD BE IMPOSED, SINCE IT IS NOT CONVINCED THAT THE RULE 11 STRICTURES HAVE BEEN VIOLATED.

THAT'LL BE THE RULING OF THE COURT. THE MOTION, AS I SAY, IS GRANTED, WITHOUT LEAVE TO AMEND. THE COURT SEES NO PUR-

POSE IN GRANTING LEAVE TO AMEND AT THIS TIME. I DON'T SEE HOW THE PARTIES COULD POSSIBLY CURE WHAT I SEE AS THE BASIS FOR THE CIVIL PROCESS AND LEGAL DEFENSE. I THINK THEY STATED WHAT THEY HAD TO STATE AS WELL THEY CAN.

WOULD COUNSEL PLEASE PREPARE AN APPROPRIATE FORMAL ORDER.

MR. WAXMAN: I WILL, YOUR HONOR.

IN VIEW OF THE FACT COURT HAS OBVIOUSLY SPENT A GREAT DEAL OF TIME ANALYZING THE ISSUES HERE, I WONDER IF THE COURT WOULD GIVE SOME CONSIDERATION TO PUBLISHING THIS OPTION. AS THE COURT KNOWS, THIS COMES UP ALL THE TIME BETWEEN HOSPITALS ON STATUTES AND MEDICAL STAFFS, AND SUCH AN OPINION WOULD BE OF GREAT ASSISTANCE IN CLARIFYING THE LAW IN THE AREA, IN THAT IT IS SOMEWHAT A NEW AREA.

THE COURT: WELL, I'LL GIVE IT SOME CONSIDERATION. BUT FROM LOOKING OVER HERE AT PLAINTIFF'S COUNSEL, I HAVE A SNEAKING SUSPICION THAT THEY'RE GOING TO BE ASKING FOR CLARITY FROM A MORE AUGUST BODY THAN THIS COURT, AND YOU WILL PROBABLY HAVE A PUBLISHED OPINION OF EVEN GREATER IMPORT AND VALUE BEFORE LONG, BUT I WILL CONSIDER IT.

MR. WAXMAN: THANK YOU.

MR. SILVER: YOUR HONOR, THERE'S ONE, I BELIEVE, HOUSEKEEPING MATTER THAT WE SHOULD ADVISE THE COURT OF, AND THAT IS PLAINTIFFS DID BRING INTO THIS ACTION THE STATE OF CALIFORNIA AND THERE IS A STIPU-

LATION FLOATING, THAT HAS LEFT MY OFFICE AND MAY HAVE REACHED MR. WAXMAN'S OFFICE, ON IT'S WAY DOWN TO THE STATE OF CALIFORNIA TO DISMISS THE STATE AS A PARTY DEFENDANT TO THIS ACTION.

I BELIEVE THAT WITH LEAVE, BY THE WAY, AND PLAINTIFF ABSOLUTELY, TO BRING THEM BACK IN, IN THE EVENT THAT THE DEFENDANTS ASSERTED THEY WERE A NECESSARY PARTY, IN ORDER TO SHORT-CIRCUIT ANY OTHER PROBLEMS AND PATHS TO THE CIRCUIT, I WOULD NONETHELESS ASK YOUR HONOR TO SIGN THAT ORDER DISMISSING THE STATE OF CALIFORNIA, AS WELL AS THE ORDER DISMISSING THE ACTION, SO THAT IF WE DO SEEK CIRCUIT REVIEW THERE IS NO SHORT-CIRCUITING IT BY THIS STIPULATION. I'D WANT A FINAL ORDER, IN OTHER WORDS

THE COURT: SURE. AND I WOULD THINK THAT IF THE STATE OF CALIFORNIA'S DISMISSED AND I GRANTED THESE MOTIONS TO DISMISS WITHOUT LEAVE TO AMEND, WE'VE GOT NOTHING LEFT. YOU'VE GOT A FINAL ORDER. AM I NOT CORRECT?

MR. SILVER: WELL, THAT'LL HAVE TO AWAIT THE SIGNING OF THE STIPULATION AS WELL AS YOUR HONOR'S SIGNING OF THIS ORDER.

THE COURT: CORRECT.

MR. SILVER: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

(PROCEEDINGS ADJOURNED.)

APPENDIX 2

FIRST AMENDED COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS AND CIVIL RIGHTS (42 U.S.C. § 1983 and § 1985(3)); DECLARATORY JUDGMENT AND TREBLE DAMAGES FOR VIOLATION OF SECTION 1 OF THE SHERMAN ANTI-TRUST ACT AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

STATEMENT AS TO JURISDICTION

1. This civil action arises under the Constitution of the United States and 42 U.S.C. § 1983, § 1985, and § 1983; 28 U.S.C. § 2201 and § 2202, and 15 U.S.C. § 1.

2. This court has jurisdiction of the action under 28 U.S.C. § 1331, § 1337 and § 1343, and 15 U.S.C. § 4 and § 15.

3. The matter in controversy exceeds Ten Thousand Dollars ($10,000), exclusive of interest and costs.

VENUE

4. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1392.

PARTIES

5. Plaintiff, Simon J. Pinhas, M.D., ("Dr. Pinhas") is a physician and surgeon duly licensed by the defendant, State of California, Board of Medical Quality Assurance and has limited his practice to that of eye physician and ophthalmological surgeon. Plaintiff presently, and at all times stated herein, was a Board certified surgeon, having been certified in 1982. Plaintiff has been engaged in the practice of medicine and surgery since 1977 and as such

as engaged in interstate commerce. Until the grievances hereinafter complained of, plaintiff was a member, in good standing, of the defendant Medical Staff of Midway Hospital. Plaintiff is a citizen of the United States and a resident of the State of California and this judicial district.

6. Defendant Summit Health Ltd. ("Summit Health") is a corporation authorized to do business pursuant to the laws of the State of California and is the parent of Midway Hospital and Medical Center. Summit Health is engaged in interstate commerce and owns and operates approximately 19 hospitals and 49 nursing home facilities in California, Arizona, Colorado, Oregon, Iowa, Washington, Texas and Saudi Arabia.

7. Defendant Midway Hospital Medical Center ("Midway Hospital") is engaged in interstate commerce and is a general hospital organized and existing pursuant to the laws of the State of California and conducts its business by providing medical facilities and medical care in Los Angeles, California.

8. Defendant Medical Staff of defendant Midway Hospital ("Medical Staff") is an unincorporated association of physicians engaged in interstate commerce practicing medicine at Midway Hospital with its principal place of activity located at Los Angeles, California. Defendant Medical Staff, in a conspiracy with other defendants, has wrongfully summarily suspended plaintiff and has commenced and prosecuted an unjustified, illegal and unconstitutional peer review proceeding ("Peer Review Proceeding") against plaintiff.

9. Mitchell Feldman ("Mr. Feldman") at all times mentioned herein was the regional vice-president of defendant Summit Health, a citizen of the State of Califor-

nia, and a resident of this judicial district, and he, along with others yet unknown to the plaintiff, has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

10. Defendant August Reader, M.D. ("Dr. Reader") is a physician and surgeon duly licensed by the defendant, State of California, Board of Medical Quality Assurance and has limited his practice to that of eye physician and ophthalmological surgeon and is competition with plaintiff Dr. Pinhas. Dr. Reader is engaged in interstate commerce and is a member of the defendant Medical Staff, a citizen of the State of California, and a resident of this judicial district, and he, along with others yet unknown to the plaintiff, has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

11. Defendant Arthur Lurvey, M.D. ("Dr. Lurvey") is a physician and surgeon duly licensed by the defendant, State of California, Board of Medical Quality Assurance and at all times mentioned herein was the Chief of Staff of Midway Hospital. Dr Lurvey is engaged in interstate commerce, is a citizen of the United States, resident of the State of California and a resident of this judicial district, and he, along with others yet unknown to the plaintiff, has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

12. Defendant Richard E. Posell ("Mr. Posell") is, and at all times herein mentioned was engaged in interstate commerce and was, an attorney at law, duly admitted and practicing law in the State of California and is a citizen of the United States, resident of the State of

California and a resident of this judicial district, and has caused, directly or indirectly, the prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

13. Defendant Jonathan I. Macy, M.D. ("Dr. Macy") is a physician and surgeon duly licensed by the defendant, State of California, Board of Medical Quality Assurance and has limited his practice to that of eye physician and ophthalmological surgeon and is in competition with plaintiff Dr. Pinhas. Dr Macy is engaged in interstate commerce and is a member of the defendant Medical Staff, a citizen of the State of California, and a resident of this judicial district, and he, along with others yet unknown to the plaintiff, has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

14. Defendant James J. Salz, M.D. ("Dr. Salz") is a physician and surgeon duly licensed by the defendant, State of California, Board of Medical Quality Assurance and has limited his practice to that of eye physician and ophthalmological surgeon and is in competition with plaintiff Dr. Pinhas. Dr. Salz is engaged in interstate commerce and is a member of the defendant Medical Staff, a citizen of the State of California, and a resident of this judicial district, and he, along with others yet unknown to the plaintiff, has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

15. Defendant Gilbert Perlman, M.D. ("Dr. Perlman") is a physician and surgeon duly licensed by the defendant, State of California, Board of Medical Quality Assurance and has limited his practice to that of eye

physician and ophthalmological surgeon and is in competition with plaintiff Dr. Pinhas. Dr. Perlman is engaged in interstate commerce and is a member of the defendant Medical Staff, a citizen of the State of California, and a resident of this judicial district, has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

16. Defendant Peggy Farber ("Ms. Farber") is employed by defendants Summit Heath and Midway Hospital in their Risk Management Section. At the direction of her employers and others, she was charged with (a) securing the information which was placed in the false charges brought against Dr. Pinhas and (b) interfering with Dr. Pinhas' defense against those charges at the Peer Review Proceedings. Ms. Farber is a citizen of the State of California, and a resident of this judicial district.

17. Defendant Mark A. Kadzielski ("Mr. Kadzielski") is a principal of defendant Weissburg & Aronson Inc., and at all times herein mentioned was engaged in interstate commerce and was, an attorney at law, duly admitted and practicing law in the State of California. Mr. Kadzielski is a citizen of the State of California, and a resident of this judicial district, and has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

18. Defendant Weissburg & Aronson Inc. ("W&A") is engaged in interstate commerce and is a professional corporation engaged in the practice of law in the State of California and this judicial district, and has caused, directly or indirectly, the commencement and prosecution of the Peer Review Proceeding against plaintiff in violation of plaintiff's rights.

19. Defendant State of California, Board of Medical Quality Assurance ("BMQA") is an agency of the State of California created by and existing pursuant to Business and Professions Code, § 2000 et seq. Defendant BMQA is charged with the responsibility of enforcing, among others, Sections 805, 805.1 and 805.5 of the California Business and Profession Code as well as Section 423 et. seq. of the Health Care Quality Improvements Act of 1986, 42 U.S.C. § 11133, et. seq.

20. Relief is sought against each and all defendants, as well as their agents, assistants, successors, employees, attorneys, representatives and all persons acting in concert or in cooperation with them or at their direction.

FACTUAL ALLEGATIONS

21. From October, 1981 through the present, plaintiff Dr. Pinhas, a diplomat of the American Board of Ophthalmology, has been a member of the defendant Medical Staff. As such, he has had the right to cause the admission of his patients to defendant Midway Hospital and to use defendant Midway Hospital's facilities for the care and treatment of his patients, including, but not limited to, the facilities to perform eye surgery.

22. By reason of his training, experience and skill, Dr. Pinhas holds a national and international reputation as a specialist in corneal eye problems. He performs general eye surgery and specifically cornea transplants, cataract removal, and interocular lens replacements. Because of his training, experience and skill, Dr. Pinhas is able to perform these surgeries with a high level of success and with few, if any, complications. One of the reasons for his success is the rapidity with which he, as distinguished from his competitiors, can perform such surgeries. The speed with which such surgery can be completed benefits

the patient because the exposure of cut eye tissue is drastically reduced. Some of Dr. Pinhas' competitors regularly require, on the average, six times the length of surgical time to complete the same procedures as Dr. Pinhas. Because of his reputation, skill and successes Dr. Pinhas has performed more surgeries than any other ophthalmic surgeon at Midway Hospital during the relevant time period.

23. Prior to February, 1986, the common practice in Los Angeles County was to have most eye surgeries, especially cataract extractions, performed by a primary surgeon and a second, assistant surgeon. This practice required by the defendant Medical Staff, the ("assistant surgeon requirement"), significantly increased the cost of such eye surgeries.

24. In February 1986, the administrators of Medicare, the federal health insurance program for the elderly, determined that assistant surgeons were not necessary in connection with the performance of such eye surgeries and refused, henceforth, to provide reimbursement for the charges of any such assistant.

25. Certain ophthalmic surgeons of staff at defendant Midway Hospital, including plaintiff Dr. Pinhas, requested that the defendant Medical Staff modify its assistant surgeon requirement. Nearly all hospitals in Southern California, except defendant Midway Hospital and Cedars-Sinai (whose Medical Staff overlaps with that of defendant Midway Hospital), abolished the assistant surgeon requirement at or about the time that Medicare made its change. The request to eliminate the assistant surgeon requirement at Midway Hospital was denied and remains in effect at the time of the filing of this First Amended Complaint.

26. The consequence of the failure to make the change was that surgeons, such as the plaintiff, would have to compensate their competitors to be their assistants during surgery since Medicare would no longer compensate such assistants. Plaintiff Dr. Pinhas advised the administration of Midway Hospital that the additional costs to him of the Medical Staff's refusal to eliminate the assistant surgeon requirement would be about $60,000 per year. Dr. Pinhas, expressing a desire to keep the bulk of his practice at defendant Midway Hospital, nonetheless stated that he would move his practice if the assistant surgeon requirement was not abolished.

27. On or about January 26, 1987 defendants Summit Health and Midway Hospital, seeking to resolve the difficulty created by defendant Medical Staff's refusal to abolish the assistant surgeon requirement and Medicare's refusal to reimburse for assistant surgeons. Defendant Summit Health and Midway Hospital offered a "sham" contract to Dr. Pinhas, a true and correct copy of this "sham" contract is attached hereto and made a part hereof as Exhibit "A". The scheme provided by this "sham" contract was to "hire" Dr. Pinhas for $36,000 per year (later raised orally to $60,000 per year) to perform certain services, except, Dr. Pinhas would never be called upon to do such work. The "sham" contract was a vehicle by which defendants Summit Heath and Midway Hospital would pay Dr. Pinhas for continuing to bring patients to Midway Hospital. When the "sham" contract was explained to Dr. Pinhas, he was told that many of the members of the defendant Medical Staff had similar contracts, and that the Chief of the defendant Medical Staff, defendant Dr. Lurvey, was aware of this proposed contract and the other "sham" contracts.

28. Dr. Pinhas refused to in anyway participate in such a scheme, refused to sign the contract, and refused to return the contract, even after defendant Dr. Lurvey, acting on behalf of himself, defendant Summit Health, defendant Mr. Feldman, defendant Midway Hospital and defendant Medical Staff threatened that plaintiff's failure to do so would cause a review of his charts and possible Peer Review Proceedings. Nevertheless, defendants Summit Health and Midway Hospital made one monthly payment of $5000 to Dr. Pinhas. This payment was "hidden" in a reimbursement check to Dr. Pinhas and was promptly recorded by Dr. Pinhas as an overpayment and a credit against the amount of defendants Midway Hospital and Summit Health otherwise owed Dr. Pinhas.

29. By letter dated April 13, 1987 ("April 13, 1987 letter"), and without prior notice or an opportunity for a hearing, Dr. Pinhas was advised by defendants Summit Health and Midway Hospital, through defendants Dr. Lurvey and Mr. Feldman, that he was summarily suspended as of that immediate date. As such, Dr. Pinhas was deprived of all medical staff privileges, including the right to admit his patients and to perform surgical procedures. The April 13, 1987 letter stated that such action was the result of a "medical staff review of Dr. Pinhas' medical records, with consideration as to the questions raised regarding: indications for surgery; appropriateness of surgical procedures in light of patient's medical condition; adequacy of documentation in medical records; and ongoing pattern of identified problems." (A true and correct copy of the April 13, 1987 letter is attached hereto as Exhibit "B" and made a part hereof.)

30. By the same April 13, 1987 letter, Dr. Pinhas was advised that the Midway Hospital Medical Executive

Committee ("Midway Executive Committee") would convene to review and consider the action within 10 days.

31. On April 20, 1987 the Midway Executive Committee met. After an initial meeting from which Dr. Pinhas was excluded, the Executive Committee invited him into the meeting room and requested that Dr. Pinhas make a statement. Lacking sufficient notice, unprepared, confused and without benefit of legal or fellow staff advice, he asked what the charges were, and was told that the letter of April 13, 1987 was self-explanatory. Thereafter, Dr. Pinhas attempted to reply briefly.

32. By letter dated April 20, 1987, the same date of that meeting, defendants Midway Hospital and Summit Health notified Dr. Pinhas that the Midway Executive Committee had upheld the summary suspension with the recommendation to terminate his staff privileges at Midway Hospital. He was also informed that the Midway Hospital Board of Directors had concurred with the Midway Executive Committee's recommendation. (A true and correct copy of the April 20, 1987 letter is attached hereto as Exhibit "C" and made a part hereof.)

33. In accordance with the Midway Hospital Medical Staff Bylaws ("Bylaws", a true and correct copy of the relevant portions of which are attached hereto as Exhibit "D" and made a part hereof), Dr. Pinhas requested a hearing by the Midway Hospital Judicial Review Committee ("Judicial Review Committee") by letter dated April 30, 1987. (A true and correct copy of the April 30, 1987 letter is attached hereto as Exhibit "E" and made a part hereof.)

34. In his April 30, 1987 letter, Dr. Pinhas made certain procedural and discovery requests, including the right to be represented by retained counsel, the right to

full disclosure with sufficient particularity of all charges against him, the right to an impartial hearing officer, and the right to an unbiased, unprejudiced hearing panel.

35. On May 7, 1987 Dr. Pinhas received Midway Hospital's Notice of Hearing ("May 7, 1987 Notice") from defendants Midway Hospital and Summit Health, through defendant Mr. Feldman, scheduling the Judicial Review Committee's proceedings to commence on May 12, 1987. (A true and correct copy of the May 7, 1987 Notice is attached hereto as Exhibit "F" and made a part hereof.)

36. The May 7, 1987 Notice, according to the Bylaws, is also meant to serve the function of notifying a Respondent before the Judicial Review Committee of the charges that are being made against him. Those charges as contained in the May 7, 1987 Notice were rendered in broad, general terms. The Notice listed "specific charts" that the Hospital contended would support those charges. But the charts identified were not made available to Respondent as of the date of May 7, 1987 Notice. Approximately 128 charts were identified, though some appeared to be duplicates.

37. The May 7, 1987 Notice announced the appointment, by defendant Dr. Lurvey, of the members of the Judicial Review Committee and the appointment of the Hearing Officer, defendant Mr. Posell. All of the physicians who are included as members of the Judicial Review Committee are dependent upon the defendants Midway Hospital and Summit Health for their economic livelihood and professional activities. The members of the Judicial Review Committee, members of the defendant Medical Staff, together with defendants Summit Health, Midway Hospital, Dr. Lurvey, Mr. Feldman and Mr. Posell are represented by the same counsel, defendant W&A. W&A

has represented the other defendants in connection with the preparation of the false and unjustified charges brought against plaintiff Dr. Pinhas.

38. The Judicial Review Committee, over the objection of Dr. Pinhas, included physicians who were and are in direct economic and professional competition with plaintiff Dr. Pinhas: John Hofbauer, M.D. and Stephen Seiff, M.D.

39. The May 7, 1987 Notice, in a summary fashion dismissed some of Dr. Pinhas' procedural and discovery requests, and stated that the Judicial Review Committee had unanimously voted not to permit Dr. Pinhas to be represented by an attorney at law at the hearing.

40. On May 9, 1987, Dr. Pinhas filed his Objections to the Notice of Hearing ("Objections"). (A true and correct copy of Dr. Pinhas' Objections is attached hereto as Exhibit "G" and made a part hereof.)

41. In his Objections, Dr. Pinhas contended that the May 7, 1987 Notice did not provide a reasonable quantum of time in which he could prepare, present, and have decided the preliminary Motions that he believed had to be resolved — with respect to procedure and substance — prior to the hearing of his matter. Moreover, Dr. Pinhas argued that without more specific information, and without possession and sufficient review and analysis of documentary evidence, the Judicial Review Committee hearing, as established and scheduled, contravened his rights under the United States and California Constitutions, the laws of the State of California, and the contractual obligations imposed upon defendant Midway Hospital and the defendant Medical Staff to fair notice and a rational and meaningful opportunity to be heard.

42. In his Objections, Dr. Pinhas requested that the Judicial Review Committee sustain those objections and dismiss the Notice of Hearing as totally defective.

43. On May 12, 1987, the administration of defendants Midway Hospital and Summit Health did not act upon the objection, but treated it as a request for a continuance and granted Dr. Pinhas a two week continuance, rescheduling the Judicial Review Committee hearing for May 26 and 27, 1987.

44. Because the May 7, 1987 Notice of Hearing named defendant Mr. Posell as the Hearing Officer, on May 8, 1987, Dr. Pinhas, through his counsel Lawrence Silver, sent Mr. Posell a letter requesting that he respond to certain questions in order that Dr. Pinhas could determine whether to file a challenge to Mr. Posell sitting as the Hearing Officer. (A true and correct copy of the May 8, 1987 letter is attached hereto as Exhibit "H" and made a part hereof.)

45. By letter ("Posell letter") dated May 11, 1987, Mr. Posell refused to respond to Dr. Pinhas' request. (A true and correct copy of the Posell letter is attached hereto as Exhibit "I" and made a part hereof.)

46. On May 14, 1987, Dr. Pinhas, through his counsel, filed 15 Motions with respect to procedural and discovery issues, including Motions regarding his request for representation by counsel and his request that Mr. Posell respond to certain voir dire questions in order to ascertain any bias, prejudice, or interest on Mr. Posell's part. (True and correct copies of these Motions are attached hereto as Exhibit "J" and made a part hereof.)

47. On information, knowledge and belief, plaintiff alleges that defendant Mr. Posell is biased and prejudiced against he and his counsel, Lawrence Silver,

and that Mr. Posell and members of the law firm of which he is a partner, Shapiro, Posell & Close, serve as hearing officers at the request of defendant W&A in cases where W&A represents the hospital. There is a unity of interest between defendants W&A and Mr. Posell. Mr. Posell and his law firm are retained and continue to be retained as counsel to the Hospital because Mr. Posell ensures that Judicial Review Committees achieve the results that W&A and the clients of W&A desire. Mr. Posell and Shapiro, Posell & Close have an economic interest in the outcome of the Peer Review Proceeding and had such an economic interest at the outset because his continued employment by defendant Summit Health, defendant Midway Hospital, defendant W&A and the defendant Kadzielski depends upon his continued rulings in favor of the defendant Midway Hospital's position and against physicians who are in the same position as Dr. Pinhas.

48. On May 18, 1987, Mr. Posell wrote to Dr. Pinhas' counsel and reiterated that the May 7, 1987 Notice advised Dr. Pinhas that the Judicial Review Committee had unanimously voted not to permit either Dr. Pinhas or the Medical Staff to be represented by an attorney at law at the hearing. Mr. Posell further stated that neither the Hearing Officer nor the Judicial Review Committee may consider Motions or requests made "in any phase of the hearing or appeal procedure by an attorney at law unless the Hearing Committee, in its discretion, permits both sides to be represented by legal counsel." Mr. Posell cited Bylaw Article VIII, Section 2(b), stating further that Dr. Pinhas' counsel's continued participation was a violation of that Bylaw. (A true and correct copy of Mr. Posell's May 18, 1987 letter is attached hereto as Exhibit "K" and made a part hereof.)

49. On May 19, 1987, Dr. Pinhas' counsel asked defendant Mr. Posell to recuse himself because of bias and prejudice and to answer three questions related to his ex parte communications with counsel for the defendant Midway Hospital, and for clarification of his ruling. (A true and correct copy of the letter to Mr. Posell dated May 19, 1987 is attached hereto as Exhibit "L" and made a part hereof.) Mr. Posell has not responded to that letter.

50. On May 19, 1987, Dr. Pinhas, appearing in propria persona, refiled the same 15 Motions respecting procedural and discovery matters, specifically including: the request to be represented by counsel; the request that the Hearing Officer respond to the voir dire questions submitted to him; the request for the full disclosure with particularity of the charges against him; and the request that Dr. Pinhas' motions be heard and decided at a reasonable time prior to the commencement of the hearing.

51. On May 21, 1987, defendant Mr. Posell denied nearly all of the Motions filed by Dr. Pinhas. (A true and correct copy of the letter from Mr. Posell dated May 21, 1987 is attached hereto as Exhibit "M" and made a part hereof.)

52. The alleged peer review hearings concerning Dr. Pinhas commenced on May 26 and proceeded for a total of six hearing sessions which were concluded on June 12, 1987.

53. During the course of the hearings, defendants Summit Health, Midway Hospital, the Medical Staff, Mr. Posell, Mr. Kadzielski, W&A, Dr. Perlman, Mr. Feldman, Dr. Lurvey and Ms. Farber, engaged in conduct to deprive plaintiff Dr. Pinhas of a fair hearing.

54. On information, knowledge and belief, plainti alleges that defendants Mr. Kadzielski and W&A, d rectly and indirectly, had improper ex parte communic tions with defendant Mr. Posell.

55. On information, knowledge and belief, plainti alleges that defendants Mr. Kadzielski and W&A, d rectly and indirectly, had improper ex parte communic tions with members of the Judicial Review Committee.

56. On information, knowledge and belief, plainti alleges that defendant Dr. Perlman had improper e parte communications with members of the Judicial R view Committee.

57. On information, knowledge and belief, plainti alleges that defendants Dr. Lurvey, the Medical Staf Summit Health, Midway Hospital had improper ex part communications with members of the Judicial Revie Committee.

58. On information, knowledge and belief, plainti alleges that defendant Mr. Posell had improper ex part communications with members of the Judicial Revie Committee.

59. Defendants Summit Health, Midway Hospita Medical Staff and others sought to, and did in fac intimidate witnesses Dr. Pinhas sought to call as wi nesses in his defense of the case, including the threat initiating Peer Review Proceedings against physician who might testify on behalf of Dr. Pinhas.

60. Defendants Summit Health, Midway Hospita Medical Staff, Ms. Farber and others sought to, and di in fact, intimidate witnesses Dr. Pinhas sought to call a witnesses in his defense of the case.

61. On June 1, 1987, at approximately 6:30 p.m., defendant Ms. Farber of Midway Hospital's Risk Management Section approached a table in the cafeteria where Marina Nino, Barbara Aviles, Rose Pierce and Suprani Watana, all of whom were employed by defendants Summit Health and Midway Hospital, were sitting while they were waiting to be called into the hearing regarding Dr. Pinhas' privileges. Ms. Farber said the following:

a. "I want to prepare you for what you are getting yourselves into."

b. "You don't have to do this."

c. "You can leave if you want to. You will not be persecuted or harassed if you leave."

d. "You are on your own, the hospital will not pay for your time."

e. "It is going to be like a court in there. There is a court stenographer. Everything you say will be taken down and under oath."

f. "You will each be called, one by one, you will not be allowed to go in as a group."

g. "You will be questioned in there by doctors, you will be cross-examined."

62. Shortly thereafter, Kay Deol, an administrator of defendant Midway Hospital and an employee of defendants Summit Health, Midway Hospital and Mr. Feldman, came over to the table and she and defendant Ms. Farber stayed around and hovered around the cafeteria for the rest of the evening. (True and correct copies of the declarations dated June 9, 1987 of Marina Nino and Barbara Aviles are attached hereto as Exhibit "N" and made a part hereof.)

63. Defendants Summit Health, Midway Hospital, Medical Staff, Mr. Kadzielski, W&A, Mr. Posell, Mr. Feldman, and Dr. Lurvey, precluded plaintiff Dr. Pinhas from examining two important witnesses, Mr. Feldman, the person who signed the charges against Dr. Pinhas and Dr. Lurvey, Chief of Staff who allegedly authorized the charges against Dr. Pinhas. Said defendants refused to produce Mr. Feldman and Dr. Lurvey as witnesses for cross-examination even though, -

a. Mr. Feldman signed the charges,

b. Dr. Lurvey was listed in Exhibit "F", the charges, as a witness who would appear at the hearing, and

c. Dr. Pinhas and his representative repeatedly requested that they appear at the hearing and testify truthfully. (A true and correct copy of Dr. Pinhas' request to Dr. Lurvey and Mr. Feldman to appear are attached hereto as Exhibit "O" and made a part hereof.)

64. It is custom and practice in California that during the peer review proceeding, even if the Judicial Review Committee does not permit counsel to be present at the hearing, counsel is permitted to be on the grounds of the hospital to confer with his client during appropriate breaks in the proceeding.

65. Defendant Mr. Posell issued an order ordering counsel for Dr. Pinhas, who had been listed as a witness, excluded from the Hospital grounds during any portion of the hearing, while permitting counsel for the Hospital, Mr. Kadzielski and/or associates of W&A, not only to utilize hospital facilities, but also to communicate with the prosecutor, defendant Dr. Perlman.

66. Defendant Mr. Posell acted not only as Hearing Officer but also as counsel for defendant Midway Hospital and the Medical Staff, and ruled and continued to rule, without legal or factual justification, adversely to Dr. Pinhas.

67. Defendant Mr. Posell, acting as counsel for the Medical Staff, refused to allow Dr. Pinhas to have counsel.

68. Defendant Mr. Posell made rulings during the course of the entire proceeding to frustrate and interfere with plaintiff Dr. Pinhas' ability to defend against the charges brought against him.

69. Defendant Mr. Posell ruled that Dr. Pinhas' counsel's correspondence would not be answered, and yet complied with all requests of defendants Mr. Kadzielski and W&A.

70. Defendant Mr. Posell intentionally ordered witnesses not to testify to the fact that defendant Dr. Macy and defendant Dr. Salz, who testified adversely to Dr. Pinhas at the hearing, also engaged in the same similar conduct with which Dr. Pinhas was charged. Mr. Posell precluded them from being identified by witnesses who were prepared to identify Dr. Macy and Dr. Salz to establish what the "standard in the community" was. Defendant Mr. Posell declined to permit Dr. Pinhas and his physician representative to have breaks and time to confer. In addition, Mr. Posell issued time requirements which were inherently unfair, and substantially prejudiced Dr. Pinhas. Mr. Posell, on the other hand, always considered and granted whatever requests were made by the prosecutor defendant Dr. Perlman.

71. Defendant Mr. Posell precluded testimony and evidence from being presented by Dr. Pinhas, and made

hostile verbal comments to Dr. Pinhas, his physician representative and witnesses who appeared on behalf of Dr. Pinhas on and off the record made before the Judicial Review Committees.

72. Defendant Mr. Kadzielski and W&A retained, as they have done in the past, the services of Lacey Shorthand Reporting Service ("Lacey Reporters"), over whom they seek to exercise and do exercise control by reason of the substantial business they place with Lacey Reporters. Dr. Pinhas needed a copy of the transcript in order to adequately examine witnesses and prepare cross-examination. Plaintiff Dr. Pinhas, through counsel, ordered a copy of the transcript from Lacey Reporters on an expedited basis. Notwithstanding the order, defendant Mr. Kadzielski and W&A ordered Lacey Reporters not to produce the transcript. On the same day as defendant Mr. Kadzielski and W&A issued their instructions to Lacey Reporters, counsel for Dr. Pinhas inquired how the preparation of the transcript was coming and was advised that Lacey Reporters could not produce a transcript in any timely fashion by which Dr. Pinhas could be able to use it for successive hearings. Upon information, knowledge and belief, plaintiff alleges that Lacey Reporters did so at the request of defendants Mr. Kadzielski and W&A. A day or so later Lacey Reporters agreed to produce the transcript, but not before the date that its utility for cross-examination would have passed and at a page rate of $12.00 per page.

73. Defendant Mr. Posell, after he heard from other defendants that plaintiff Dr. Pinhas, through counsel, was trying to secure a transcript, and while the hearing was pending, called Dr. Pinhas on the telephone. During that telephone conversation Mr. Posell called Dr. Pinhas a liar and threatened him by saying that Dr. Pinhas' attempts

to get a copy of the transcript would cause him problems in the future.

74. On June 29, 1987 Dr. Pinhas received in the mail a document entitled "Report and Decision of the Judicial Review Committee ("Report and Decision") (a copy of the Report and Decision is attached hereto as Exhibit "P").

75. Upon information, knowledge and belief, plaintiff alleges that defendant Mr. Posell drafted the purported Report and Decision in an effort to protect defendants Summit Health, Midway Hospital, the Medical Staff, Dr. Lurvey, Mr. Feldman and himself from liability, and that such report was inconsistent with the findings and determinations of the Judicial Review Committee.

76. Although the alleged Report and Decision purports to bear the signature of the Chairman of the Judicial Review Committee, Ellis Berkowitz, M.D.; it does not. Plaintiff on information knowledge and belief alleges that this alleged Report and Decision is not reflective of the determination of that tribunal. Plaintiff on information knowledge and belief alleges that this alleged Report and Decision was signed by an agent of defendants Summit Health, Midway Hospital, the Medical Staff, Mr. Feldman and Dr. Lurvey, without the authorization of each member of the Judicial Review Committee.

77. On July 6, 1987 the defendant Medical Staff appealed the decision of the Judicial Review Committee to the Governing Board of defendant Midway Hospital (a copy of the appeal of Defendant Medical Staff is attached hereto and made a part hereof as Exhibit "Q").

78. On July 7, 1987 Plaintiff Dr. Pinhas appealed the purported decision of the Judicial Review Committee to the Governing Board of the Defendant Midway Hospital

(a copy of the appeal of plaintiff Dr. Pinhas is attached hereto as Exhibit "R").

FIRST CLAIM FOR RELIEF

(For Declaratory Relief Against Defendants Summit Health, Midway Hospital, Medical Staff, Mr. Feldman, Dr. Lurvey and BMQA Because They are Violating the Constitution of the United States by Enforcing and Participating in the Enforcement of Section 805 and 805.5 of the California Business and Professions Code and Section 423, et seq of the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11133)

79. Plaintiff incorporates Paragraphs 1 through 78, inclusive, above by reference as though set forth in full herein.

80. Defendants, and each of them, are estopped from denying, that the actions which the defendants have taken, and the actions which are threatened by the defendants, have been done and are being done pursuant to and under authority of the laws of the State of California and the laws of the United States.

81. Defendants, and each of them, are estopped from denying that they have acted, claim to act, and threaten to continue to act, pursuant to, under the authority of, and within the protection of:

a. Section 70703, et seq., of the California Administrative Code;

b. Section 805 of the California Business and Professions Code;

c. Section 805.5 of the California Business and Professions Code;

d. Section 805.1 of the California Business and Professions Code;

e. Section 1094.5 of the California Code of Civil Procedure and the case law decided thereunder;

f. Sections 1156 and 1157 of the California Evidence Code;

g. Section 43.7 of the California Civil Code;

h. Other provisions of the laws of the State of California and the case law decided thereunder; and

i. Sections 423 et seq. of the Health Care Quality Improvements Act of 1986, 42 U.S.C. § 11133, et. seq.

82. To maintain licenses, health care facilities regularly must review privilege termination and restriction procedures to assure their conformity to applicable law. The California Administrative Code § 70703(a) requires that the Hospital "shall have an organized medical staff responsible to the governing body for the adequacy and quality of the medical care rendered to patients in the hospital." According to Title 22, California Administrative Code, § 70701(a)(1)(F), a Hospital must have a governing body which must adopt written bylaws, in accordance with legal requirements and its community, which shall include "self-government by the medical staff with respect to the professional work performed in the hospital . . . ." The governing body shall "assure that the medical staff bylaws, rules and regulations are subject to governing body approval . . . , and these bylaws shall include an effective formal means for the medical staff, as a liaison, to participate in the development of all hospital policy." *Id.* at (8), (9).

83. When a health care facility terminates or restricts the privileges of a physician, it must promptly report to

the defendant BMQA all facts and circumstances that caused the termination or restraint pursuant to Section 805 of the California Business and Professions Code, which reads as follows:

"*California Business and Professions Code §805*

The chief executive officer and the chief of the medical staff, where one exists, of any health facility licensed pursuant to Division 2 (commencing with Section 1200), or any medical, psychological, dental or podiatric professional society, or medical specialty society described in Section 43.7 of the Civil Code, or any health care service plan or medical care foundation shall report to the agency which issued the license, certificate or similar authority when any licensed physician and surgeon, psychologist, podiatrist, or dentist is denied staff privileges, removed from the medical staff of the institution or if his or her staff or membership privileges are restricted for a cumulative total of 45 days in any calendar year for any medical disciplinary cause or reason. The reports shall be made within 20 working days following such removal or restriction, shall be certified as true and correct by the chief executive officer and the chief of the medical staff, where one exists, and shall contain a statement detailing the nature of the action, its date and all of the reasons for, and circumstances surrounding, the action. If the removal or restrictions is by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state.

The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in sub-

division (c) of Section 800, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976. The Board of Medical Quality Assurance, the Board of Osteopathic Examiners, and the Board of Dental Examiners shall disclose such reports as required by Section 805.5. A file containing reports received pursuant to this section shall be maintained by the agency receiving the reports for a minimum of five years after receipt.

No person shall incur any civil or criminal liability as the result of making any report required by this section.

Failure to make a report pursuant to this section shall be a misdemeanor punishable by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200)."

84. Pursuant to Section 805.5 of the California Business and Professions Code, hospitals are required to request from BMQA information regarding any adverse determination made pursuant to the peer review process contained in BMQA's records. The pertinent parts of Section 805.5 of the California Business and Professions Codes read as follows:

"*California Business and Professions Code § 805.5*

(a) Prior to granting or renewing staff privileges for any physician and surgeon, clinical psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of any such institution, shall request a

report from The Board of Medical Quality Assurance, the Board of Osteopathic Examiners, or the Board of Dental Examiners to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, clinical psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, clinical psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report where the denial, removal, or restriction was imposed solely because of the failure to complete medical records.

In the event that the board fails to advise such institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, clinical psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff which violates the provisions of subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200)."

85. California Business and Professions Code § 850.1 provides that the state licensing agency, defendant BMQA, is entitled to inspect and copy statements of charges, documents, medical charts or exhibits in evidence; and any opinion findings or conclusions relating to any disciplinary proceeding resulting in an action subject to § 805 of the Business and Professions Code reporting provisions.

86. A hospital's decision terminating and restricting privileges are judicially reviewable pursuant to Section 1094.5 of the California Code of Civil Procedure. (A copy of the text of Section 1094.5 is attached hereto as Addendum "A".)

87. Peer review proceedings are confidential pursuant to California Evidence Code Sections 1156 and 1157. (A copy of the text of Sections 1156 and 1157 are attached hereto as Addendum "B".)

88. California provides immunity to participants in the peer review process pursuant to Section 43.7 of the California Civil Code. (A copy of the text of Section 43.7 is attached hereto as Addendum "C".)

89. Defendants are estopped from denying that they have been, are presently, and will be acting under color of authority of law and the protection afforded to them provided by the laws of the State of California and of the United States. All defendants are engaged in the enforcement and execution of the laws of the State of California, and more particularly, an alleged peer review process directed to plaintiff at defendant Midway Hospital. As a result of defendants' wrongful conduct, plaintiff has been deprived of his constitutionally protected rights.

90. Defendant BMQA is the "Board of Medical Examiners" as defined by the Health Care Quality Improve-

ment Act of 1986, Section 423, et. seq. § 11133 which provides, in pertinent part:

"Sec. 423. REPORTING OF CERTAIN PROFESSIONAL REVIEW ACTIONS TAKEN BY HEALTH CARE ENTITIES[, 42 U.S.C. § 11133].

(a) REPORTING BY HEALTH CARE ENTITIES. —

(1) ON PHYSICIANS. — Each health care entity which —

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

* * *

(3) INFORMATION TO BE REPORTED. — The information to be reported under this subsection is —

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) REPORTING BY BOARD OF MEDICAL EXAMINERS. — Each Board of Medical Examiners shall report, in accordance with section 424, the information reported to it under subsection (a) and known instances of a health care

entity's failure to report information under subsection (a)(1).

* * *

Sec. 425. DUTY OF HOSPITALS TO OBTAIN INFORMATION, [42 U.S.C. § 11135].

(a) IN GENERAL. — It is the duty of each hospital to request from the Secretary (or the agency designated under section 424(b)), on and after the date information is first required to be reported under section 424(a)) —

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this part concerning the physician or practitioner, and

(2) once every 2 years information reported under this part concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

A hospital may request such information at other times. Sec. 427. MISCELLANEOUS PROVISIONS[, 42 U.S.C. § 11137].

(a) PROVIDING LICENSING BOARDS AND OTHER HEALTH CARE ENTITIES WITH ACCESS TO INFORMATION. — The Secretary (or the agency designated under section 424(b)) shall, upon request, provide information reported under this part with respect to a physician or other licensed health care practitioner to

State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

* * *

(c) RELIEF FROM LIABILITY FOR REPORTING. — No person or entity shall be held liable in any civil action with respect to any report made under this part without knowledge of the falsity of the information contained in the report.

(d) INTERPRETATION OF INFORMATION. — In interpreting information reported under this part, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred."

91. Defendant BMQA is charged with the enforcement of the Health Care Quality Improvement Act of 1986, see Section 423, et. seq.

92. Defendant BMQA asserts that the following is required pursuant to Sections 805 of the California Business and Professions Code and pursuant to Section 423 of the Health Care Quality Improvements Act of 1986:

a. Defendant Midway Hospital, by its administrator, and defendant Dr. Lurvey, as Chief of Staff of Midway Hospital, are required pursuant to Section 805 of the California Business and Professions Code to submit a "Section 805 report" to it.

b. Defendant Midway Hospital is required, pursuant to Section 423 of the Health Care Quality Im-

provements Act of 1986, to make a "Section 423 report" to it.

c. Absent notice and an opportunity for hearing, the Section 805 report, or the contents thereof, shall, pursuant to Business and Professions Code Section 805.5, be distributed to (a) all health care facilities where plaintiff Dr. Pinhas has staff privileges, upon reappointment to the staff, and (b) all hospitals where Dr. Pinhas may apply for staff privileges.

d. Absent notice and an opportunity for hearing, the Section 423 report, or the contents thereof, shall, pursuant to Section 423 of the Health Care Quality Improvements Act of 1986, be distributed, within two years, to (a) all health care facilities where plaintiff Dr. Pinhas has staff privileges, upon reappointment to the staff, and (b) all hospitals where Dr. Pinhas may apply for staff privileges.

93. Defendants Summit Health, Midway Hospital, the Medical Staff, Mr. Feldman and Dr. Lurvey have threatened to file and continue to threaten to file a Section 805 report and a Section 423 report.

94. Defendant Midway Hospital's chief executive officer and defendant Dr. Lurvey may claim immunity of the content of the filing of a Section 805 report even if that content is incorrect, misleading or malicious pursuant to Section 805 of the Business and Professions Code.

95. Defendant Midway Hospital and defendant Dr. Lurvey may claim immunity of the content of the filing of a Section 423 report even if that content is incorrect, misleading or malicious pursuant to Section 427 of the Health Care Quality Improvements Act of 1986, 42 U.S.C. § 11137(c).

96. Dr. Pinhas has no control over the wording that is contained in the Section 805 report or Section 423 report from defendant Midway Hospital and defendant Dr. Lurvey.

97. The Section 805 report and the Section 423 report was, or will be, prepared and the wording was selected within the complete discretion of defendant Midway Hospital and defendant Dr. Lurvey.

98. Defendant Midway Hospital and defendant Dr. Lurvey are not required to submit, in advance, and do not intend to submit, in advance of their filing it with BMQA, the form of Section 805 report or Section 423 report to Dr. Pinhas.

99. Defendant Midway Hospital and defendant Dr. Lurvey are not required to provide Dr. Pinhas, and will not provide Dr. Pinhas, with a copy of the Section 805 report or the Section 423 report after it has been filed with BMQA.

100. The Section 805 report and the Section 423 report or the content there of shall be distributed to other hospitals, physicians and others pursuant to the statute, regardless of the content of the reports.

101. Any receipt of the Section 805 report or Section 423 report, the maintenance of the Section 805 report or the Section 423 report, or the distribution of the Section 805 report or the Section 423 report, is done with the funds of the State of California, is done pursuant to the authority provided by the statutes of the State of California, more particularly, the California Business and Professions Code Sections 805 and 805.5 and the Health Care Quality improvements Act of 1986. The obligation of hospitals, to secure information contained in the Section 805 report or Section 423 reports for physicians whose

staff privileges are being renewed or who seek staff privileges, is compelled and criminal sanctions may apply to those who do not, pursuant to the laws of the State of California, more particularly the California Business and Professions Code Sections 805 and 805.5 and the Health Care Quality Improvements Act of 1986.

102. It is common practice in California, for every hospital who seeks appointment or reappointment of a physician to the medical staff, to require that the physician disclose whether or not they have had medical staff privileges suspended, terminated, or any action taken thereon.

103. It is common practice in California for hospitals, after the decision in *Elam v. College Park Hospital,* 132 Cal.App.3d 332, 183 Cal.Rptr. 156 (1982) to preclude admission to the hospital staff if a physician has a report that in any way casts any doubt on his competency to practice medicine or engages in any conduct which may adversely affect patient care.

104. Plaintiff Pinhas contends and seeks the declaration of this Court that § 805 and § 805.5 of the Business and Professions Code of the State of California as interpreted and implemented by the acts of the defendants, including defendant BMQA, violates the Constitution of the United States and more particularly the 14th and 5th Amendments thereto in that Dr. Pinhas' rights to due process of law, the equal protection of the laws and his rights to privacy secured to him by the Constitution of the United States are violated.

105. Defendants contend and seek a declaration to the contrary.

106. Plaintiff Pinhas contends and seeks a declaration of this Court that Section 423 et. seq. of the Health Care

Quality Improvements Act of 1986 violates the Constitution of the United States and more particularly the 5th Amendment thereto in that Dr. Pinhas' rights to due process of law, the equal protection of the laws and his rights to privacy secured to him by the Constitution of the United States are violated.

107. Defendants contend and seek a declaration to the contrary.

108. It is necessary and appropriate that this dispute between plaintiff Dr. Pinhas and defendants be adjudicated and determined promptly, so that the parties to this litigation may know their rights and obligations under the laws and Constitution of the United States and because failure to determine this dispute will result in irreparable injury to Dr. Pinhas.

SECOND CLAIM FOR RELIEF

(For Damages for Violations of Plaintiff's Constitutional Rights and the Civil Rights Act, 42 U.S.C. § 1983 by Defendants Summit Health, Midway Hospital, Medical Staff, Mr. Feldman, Dr. Reader, Dr. Lurvey, Mr. Posell, Dr. Macy, Dr. Salz, Dr. Perlman, Ms. Farber, Mr. Kadzielski, W&A, and Each of Them)

109. Plaintiff incorporates Paragraphs 1 through 78 and 80 through 103, inclusive, above by reference as though set forth in full herein.

110. Dr. Pinhas has been summarily, knowlingly, and intentionally deprived of the status and his property interest in membership on Midway Hospital's medical staff, including admitting and surgical privileges at Midway Hospital, without prior notice or an opportunity to be heard.

111. By virtue of the unjustified and unlawful Peer Review Proceeding which has been commenced and is continuing to be prosecuted against Dr. Pinhas, defendants and each of them have been, are presently, and will be acting under the color of authority and law of the State of California and of the United States. Defendants and each of them claim that they are engaged in the enforcement and execution of the laws of the State of California and the peer review process. Under such circumstances, Dr. Pinhas is entitled to due process rights under the United States Constitution.

112. Defendants, and each of them, by denying Dr. Pinhas representation by counsel, full disclosure with particularity of the charges against Dr. Pinhas and by refusing to take action on plaintiff's request that Dr. Pinhas' Motions be heard and decided at a reasonable time prior to the commencement of the hearing, are acting in contravention of procedures required by due process. Further, defendants and each of them, by denying plaintiff his right to an unbiased, unprejudiced, detached hearing officer, and by appointing the Judicial Review Committee that consists of members who are in active economic and professional competition with plaintiff and of defendant's own medical staff and subject to the control, persuasion and undue influence of defendants, is further depriving defendant of a fair opportunity to be heard as guaranteed to him by the due process and equal protection clauses of the Constitution of the United States. Further, improper ex parte communications between counsel for the Medical Staff, the hearing officer, the Judicial Review Committee members, the prosecutor, and officers of the Hospital deny plaintiff a fair hearing consistent with due process. Further, defendants' intimidation of witnesses, depriving witnesses of the plaintiff from attending the hearing, threatening plaintiff's coun-

sel with arrest and ordering him off Hospital grounds during the hearing — even though he was listed as a witness, ordering witnesses not to testify to facts helpful to plaintiff Dr. Pinhas, vilifying plaintiff, his physician representative, his witnesses, and interfering with plaintiff's ability to timely get a copy of the transcript of proceedings deprive plaintiff of due process of law.

113. Based on the conduct of defendants, and each of them, as set forth above, Dr. Pinhas has been deprived of his rights in violation of the 5th and the 14th Amendments and Due Process and Equal Protection Clauses of the United States Constitution together with his constitutional right to privacy and has been and will continue to suffer damages in an amount to be determined at the trial of this matter, but in excess of the jurisdictional limits of this Court.

114. As a result of the conduct of defendants and each of them, plaintiff is entitled to reasonable attorneys fees, pursuant to 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

(For Damages for Violations of the Constitution of the United States and the Civil Rights Act 42 U.S.C. § 1985(3) by Defendants Summit Health, Midway Hospital, Medical Staff, Mr. Feldman, Dr. Reader, Dr. Lurvey, Mr. Posell, Dr. Macy, Dr. Salz, Dr. Perlman, Ms. Farber, Mr. Kadzielski, W&A, and Each of Them)

115. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 78, 80 through 103 and 110 inclusive, of this First Amended Complaint.

116. Defendants, and each of them, have conspired to deprive plaintiff of equal protection under the laws and of equal privileges and immunities under the laws. In fur-

therance of this conspiracy, defendants, and each of them, have denied Dr. Pinhas representation by counsel, full disclosure with particularity of the charges against Dr. Pinhas and denied plaintiff's request that Dr. Pinhas' Motions be heard and decided at a reasonable time prior to the commencement of the hearing, and have acted in contravention of procedures required by due process. Further, defendants and each of them, have denied plaintiff his right to an unbiased, unprejudiced, detached hearing officer, and by appointing the Judicial Review Committee that consists of members who are in active economic and professional competition with plaintiff and of defendant's own medical staff and subject to the control, persuasion and undue influence of defendants, has further deprived defendant of a fair opportunity to be heard as guaranteed to him by the due process and equal protection clauses of the Constitution of the United States. Further, improper ex parte communications between counsel for the Medical Staff, the hearing officer, the Judicial Review Committee members, the prosecutor, and officers of the Hospital have denied plaintiff a fair hearing consistent with due process. Further, defendants' intimidation of witnesses, depriving witnesses of the plaintiff from attending the hearing, threatening plaintiff's counsel with arrest and ordering him off Hospital grounds during the hearing — even though he was listed as a witness, ordering witnesses not to testify to facts helpful to plaintiff Dr. Pinhas, vilifying plaintiff, his physician representative, his witnesses on and off the record before the Judicial Review Committee, and interfering with plaintiff's ability to timely get a copy of the transcript of proceedings has deprived plaintiff of due process of law.

117. As a result of the conduct of defendants, and each of them, plaintiff has suffered property damage to

his medical practice, and has suffered the deprivation of his property interest in membership on the Midway Hospital's medical staff, including admitting and surgical privileges, at Midway Hospital. As a consequence, plaintiff has been deprived of his rights in violation of the 5th and 14th Amendments and Due Process and Equal Protections Clauses of the United States Constitution together with the constitutionally protected right of privacy.

118. As a result of the conduct of defendants, and each of them, plaintiff has been damaged in an amount to be determined at the time of trial, but in an amount in excess of the jurisdictional limits of this Court.

119. As a result of the conduct of defendants, and each of them, plaintiff is entitled to reasonable attorneys fees, pursuant to 42 U.S.C. § 1988 of the Civil Rights Act.

FOURTH CLAIM FOR RELIEF

(Treble Damages for Violation of the Sherman Anti-Trust Act, Section 1, 15 U.S.C. § 1 by defendants Summit Health, Midway Hospital, the Medical Staff, Mr. Feldman, Dr. Reader, Dr. Lurvey, Dr. Macy, Dr. Salz, Dr. Perlman, Mr. Kadzielski, W&A and Each of Them)

120. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 78, 80, 84, 90, 91, 93 through 103, and 112, inclusive, of the First Amended Complaint.

121. Defendants Dr. Reader, Dr. Macy, Dr. Salz, Dr. Perlman, and others are engaged in the practice of medicine limited to eye medicine and ophthalmologic surgery and are in competition with plaintiff Dr. Pinhas.

122. Defendants are seeking to effectuate a boycott and drive Dr. Pinhas out of business so that other

ophthalmologists and eye physicians, including, but not limited to, defendants Dr. Reader, Dr. Macy, Dr. Salz and Dr. Perlman, will have a greater share of the eye care and ophthalmic surgery in Los Angeles.

123. In an effort to effectuate the boycott and to boycott plaintiff Dr. Pinhas, defendants Dr. Reader, Dr. Macy, Dr. Salz, Dr. Perlman, and others, including, but not limited to, Dr. Lurvey have sought to control and do control defendant Medical Staff. Defendant Mr. Feldman controls Summit Health insofar as it relates to Dr. Pinhas and Midway Hospital.

124. After Dr. Pinhas refused to accept the terms and conditions of the "sham" contract and refused to return a copy of it to Midway Hospital, and after defendant Dr. Lurvey threatened that proceedings may be instituted against him in the event that he sought to utilize this Exhibit "A" in any way detrimental to Midway Hospital, in late March, 1987 Summit Health, Midway Hospital, Medical Staff, Mr. Feldman, Dr. Reader, Dr. Lurvey, Dr. Macy, Dr. Salz, and Dr. Perlman entered into a combination and conspiracy to retaliate against Dr. Pinhas and to preclude him from continued competition in the market place, not only at defendant Midway Hospital, but by reason of the filing of an improper Section 805 report and a Section 423 report, preclude plaintiff Pinhas from practicing medicine in California, if not the United States. In furtherance of the conspiracy of defendants Summit Health, Midway Hospital, Medical Staff, Mr. Feldman, Dr. Reader, Dr. Lurvey, Dr. Macy, Dr. Salz, and Dr. Pearlman, defendants enlisted the assistance and received the assistance of Mr. Posell, Mr. Kadzielski, and W&A to create unjustified charges, to secure adverse determinations against plaintiff Dr. Pinhas, to cause a summary suspension and termination of his privileges at

Midway Hospital and report that summary suspension and termination to the defendant BMQA, and causing dissemination of that adverse determination to all hospitals which Dr. Pinhas is a member, and to all hospitals to which he may apply so as to secure similar actions by those hospitals, thus effectuating a boycott of Dr. Pinhas.

125. Without admission to other hospitals, plaintiff Pinhas has no method by which he can practice ophthalmic surgery, which constitutes the greater portion of his practice.

126. The actions undertaken by defendants in connection with the bringing of false charges against Dr. Pinhas were done with oppression and malice and:

a. Were not done in a reasonable belief that the action was in furtherance of the quality of health care;

b. Were not done after a reasonable effort to obtain the facts of the matter;

c. Were not done after adequate notice and hearing procedures afforded to Dr. Pinhas, and utilized procedures which were not fair under the circumstances; and

d. Were not based upon the reasonable belief that the action was warranted by the facts after defendants' efforts to obtain facts.

FIFTH CLAIM FOR RELIEF
(Injunctive Relief Against All Defendants)

127. Plaintiff realleges and incorporates herein by reference all of the allegations of this First Amended Complaint.

128. Defendants, and each of them, threatened to, and unless restrained will, continue to deprive plaintiff Dr. Pinhas of his right to due process and fair procedure under both the United States Constitution and the Constitution of the State of California.

129. Defendants' conduct has caused, and will continue to cause, plaintiff great and irreparable injury, including, but not limited to, the injury which resulted in the filing of a California Business and Professions Code Section 805.5 notice for which pecuniary damages would not afford adequate relief, in that they would not completely compensate plaintiff's professional reputation and good standing, and would be extremely difficult to ascertain.

WHEREFORE, plaintiff requests judgment to be entered for plaintiff and against defendants, and each of them, as follows:

1. On the First Claim for Relief, for a declaratory judgment that Sections 805 and 805.5 of the California Business and Professions Code and Section 423 et seq of the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11133 et seq., are unconstitutional, together with costs of suit incurred herein, including reasonable attorneys fees pursuant to 42 U.S.C. § 1988, and for such other and further relief as the Court deems just and proper.

2. On the Second Claim for Relief, for damages according to proof, for costs of suit incurred herein, including reasonable attorneys fees pursuant to 42 U.S.C. § 1988, and for such other and further relief as the Court deems just and proper.

3. On the Third Claim for Relief, for damages according to proof, for costs of suit incurred herein, including reasonable attorneys fees pursuant to 42 U.S.C. § 1988,

and for such other and further relief as the Court deems just and proper.

4. On the Fourth Claim for Relief, for damages according to proof and then trebled, and for costs of suit incurred herein, including reasonable attorneys fees as allowed by law, and for such other and further relief as the Court deems just and proper.

5. On all Claims for Relief an injunction, preliminary, and final, against each and all defendants, their agents, assistants, successors, employees, attorneys, representatives, and all persons acting in concert or cooperation with them or at their direction from violating the right of plaintiff.

JURY TRIAL DEMAND

1. Plaintiff hereby demands trial by jury herein.

DATED: July 13, 1987

LAWRENCE SILVER
A Law Corporation

By: LAWRENCE SILVER
Attorneys for Plaintiff
Simon J. Pinhas, M.D.

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.5

"(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to * * * Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has

not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in case in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding * * * subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safty Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the finding are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) * * * remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise

its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the adminstrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued in the court is satisfied that it is against the public interest; provided that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice f appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or deci-

sion is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h)(1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licansed hospital or any state agency made after a hearing required by statute to be conducted under the provisions of the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 115000) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits; and provided further that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency which issued licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic

Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings."

CALIFORNIA EVIDENCE CODE SECTIONS 1156 AND 1157

"§ 1156. (a) In-hospital medical or medical-dental staff committees of a licensed hospital may engage in research and medical or dental study for the purpose of reducing morbidity or mortality, and may make findings and recommendations relating to such purpose. Except as provided in subdivision (b), the written records of interviews, reports, statements, or memoranda of such in-hospital medical or medical-dental staff committees relating to such medical or dental studies are subject to Sections 2016 to 2036, inclusive, of the Code of Civil Procedure (relating to discovery proceedings) but, subject to subdivisions (c) and (d), shall not be admitted as evidence in any action or before any administrative body, agency, or person.

(b) The disclosure, with or without the consent of the patient, of information concerning him to such in-hospital medical or medical-dental staff committee does not make unprivileged any information that would otherwise be privileged under Section 994 or 1014; but, notwithstanding Sections 994 and 1014, such information is subject to discovery under subdivision (a) except that the identity of any patient may not be discovered under subdivision (a) unless the patient consents to such disclosure.

(c) This section does not affect the admissibility in evidence of the original medical or dental records of any patient.

(d) This section does not exclude evidence which is relevant evidence in a criminal action."

ADDENDUM "B"

§ 1157. Proceedings and records of medical, medical-dental, podiatric, registered dietitian, psychological or veterinary staff review committees; local medical, dental, dental hygienist, podiatric, dietetic, veterinary, chiropractic society, or state or local psychological review committees.

(a) Neither the proceedings nor the records or organized committees of medical, medical-dental, podiatric, registered dietitian, psychological or veterinary staffs in hospitals having the responsibility of evaluation and improvement of the quality of care rendered in the hospital, or medical or dental review or dental hygienist review or chiropractic review or podiatric review or registered dietitian review or veterinary review committees of local medical, dental, dental hygienist, podiatric, dietetic, veterinary, or chiropractic societies, or psychological review committees of state or local psychological associations or societies having the responsibility of evaluation and improvement of the quality of care, shall be subject to discovery.

(b) Except as hereinafter provided, no person in attendance at a meeting of any of those committees shall be required to testify as to what transpired at that meeting.

(c) The prohibition relating to discovery or testimony does not apply to the statements made by any person in attendance at * * * a meeting of any of those committees who is a party to an action or proceeding the subject matter of which was reviewed at that meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(d) The prohibitions * * * in this section do not apply to medical, dental, dental hygienist, podiatric, dietetic, psychological, veterinary or chiropractic society committees that exceed 10 percent of the membership of the society, nor to any of those committees if any person serves upon the committee when his or her own conduct of practice is being reviewed.

(e) The amendments made to this section by Chapter 1081 of the Statutes of 1983, or at the 1985 portion of the 1985-86 Regular Session of the Legislature, do not exclude the discovery or use of relevant evidence in a criminal action."

CALIFORNIA CIVIL CODE SECTION 43.7

"(b) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society, any member of a duly appointed committee of a medical specialty society, or any member of a duly appointed committee of a state or local professional society, or duly appointed member of a committee of a professional staff of a licensed hospital (provided the professional staff operates pursuant to written bylaws that have been approved by the governing board of the hospital), for any act or proceeding undertaken or performed within the scope of the functions of any such committee which is formed to maintain the professional standards of the society established by its bylaws, or any member of any peer review committee whose purpose is to review the quality of medical, dental, dietetic, chiropractic, optometric, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, veterinarians, or psychologists which committee is composed chiefly of physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, veterinarians, or psychologists for any act or proceeding undertaken or performed in reviewing the quality of medical, dental, dietetic, chiropractic, optometric, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, veterinarians, or psychologists or any member of the governing board of a hospital in reviewing the quality of medical services rendered by members of the staff if such professional society, committee, or board member acts without malice, has made a reasonable effort to obtain the facts of

the matter as to which he, she, or it acts, and acts in reasonable belief that the action taken by him, her, or it is warranted by the facts known to him, her, or it after such reasonable effort to obtain facts. 'Professional society' includes legal, medical, psychological, dental, dental hygiene, dietetic, accounting, optometric, podiatric, pharmaceutic, chiropractic, physical therapist, veterinary, licensed marriage, family, and child counseling, licensed clinical social work, and engineering organizations having as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society.

'Medical specialty society' means an organization having as members at least 25% of the eligible physicians within a given professionally recognized medical specialty in the geographic area served by the particular society.

* *

(d) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any physician and surgeon, podiatrist, chiropractor, or attorney who is a member of an underwriting committee of an interindemnity or reciprocal or interinsurance exchange or mutual company for any act or proceeding undertaken or performed in evaluating physicians and surgeons, podiatrists, chiropractors, or attorneys for the writing of professional liability insurance, or any act or proceeding undertaken or performed in evaluating physicians and surgeons or attorneys for the writing of an interindemnity, reciprocal, or interinsurance contract as specified in Section 1280.7 of the Insurance Code, if the evaluating physician and surgeon, podiatrist, chiropractor, or attorney acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he

or she acts, and acts in reasonable belief that the action taken by him or her is warranted by the facts known to him or her after reasonable effort to obtain the facts.

(e) This section shall not be construed to confer immunity from liability on any quality assurance committee established in compliance with Section 4070 and 5624 of the Welfare and Institutions Code or hospital. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against a quality assurance committee established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code or hospital, such cause of action shall exist as if the preceding provisions of this section had not been enacted."

[SUMMIT HEALTH LTD. LETTERHEAD DELETED]

CONFIDENTIAL

January 26, 1987

Simon Pinhas, M.D.
9033 Wilshire Boulevard, Suite 206
Beverly Hills, CA 90211

Dear Dr. Pinhas:

It is our pleasure to submit this letter to you as a result of our negotiations, representing the understanding and agreements made between Midway Hospital Medical Center (hereafter referred to as "Hospital") and Simon Pinhas, M.D. (hereafter referred to as "Doctor"). When our respective duly authorized signatures are affixed hereto, the terms of this Agreement shall become binding upon Hospital and Doctor for the period specified.

Doctor shall apply for, obtain and maintain medical staff membership and privileges at Hospital appropriate to the conduct of his practice during the term of this Agreement. Such membership (or temporary membership pending completion of staff application requirements), is to be obtained prior to January 1, 1987.

Doctor shall at all times be and act as an independent contractor with respect to all duties and obligations devolving upon him under this Agreement. Hospital shall neither have nor exercise any control over the methods by which Doctor performs his work. The sole interest and responsibility of Hospital with respect to the manner in which Doctor performs his work is to assure that the quality of care is provided in a competent, efficient and

satisfactory manner in accordance with the standards of medical practice in the State of California. Doctor agrees that the standards observed in his medical practice and related activities shall be subject to the bylaws, rules and regulations applying to the medical staff of the Hospital and to the peer review functions of the medical staff and review functions of the Hospital's Board of Directors. Doctor shall comply with all applicable provisions of law and other rules and regulations of any and all governmental authorities relating to ensure and regulation of physician and hospitals.

Doctor agrees to accept the appointment as Summit Nursing Home Liaison with the following duties and responsibilities concurrent with the position.

1. To act as Summit Nursing Home Liaison at the Hospital.

2. To offer in-service educational programs to Hospital staff as appropriate and requested by the in-service Coordinator of the Hospital.

3. To provide at least one continuing medical education program to the general staff bi-annually.

4. To submit quarterly reports to Hospital Administration concerning the progress and development of the Summit Nursing Home Liaison at the Hospital.

5. To offer professional guidance to Hospital Administration for the selection of appropriate capital equipment purchases for the Summit Nursing Home Liaison Program.

6. To inform Hospital of any new advances in the care and treatment of Ophthalmology patients as appropriate.

7. To participate in quality of care studies as may be requested by the Hospital Quality Assurance Committee.

In consideration for the administrative, educational and related services required of and provided by Doctor and in consideration for his abiding by all other provisions of this Agreement, Hospital will compensate Doctor at the rate of $3,000.00 per month for the period of January 1, 1987 through January 1, 1988 for a total of $36,000 for the twelve-month period.

Because Hospital has entered into this Agreement in reliance on the personal abilities of Doctor, he may not assign any of his rights or delegate any of his duties arising under this Agreement.

This Agreement shall be terminable by either party, without cause, upon thirty (30) days written notice. In the event of termination, payments owed to Doctor pursuant to this Agreement, if any, will be prorated.

This Agreement shall terminate twelve months after the date of January 1, 1987, unless sooner terminated with notice as provided above, or unless terminated by Hospital, without notice, in any of the following events:

(a) If Doctor ceases to be duly licensed and authorized to practice medicine and surgery in California; or

(b) If Doctor fails to maintain membership on the Medical Staff of the Hospital; or

(c) If Doctor fails to appropriately carry out his duties and responsibilities as Summit Nursing Home Liaison.

We hope that these understandings and agreements are in accord with our negotiations and are acceptable to you.

If this Agreement meets with your approval, please sign on the line provided below and return for final execution.

Sincerely,
MIDWAY HOSPITAL MEDICAL CENTER

By: _____
Philip A. Conen
Executive Director
("Hospital")

Accepted by:

_____
Simon Pinhas, M.D.
("Doctor")

[MIDWAY HOSPITAL MEDICAL CENTER
LETTERHEAD DELETED]

April 13, 1987

Simon Pinhas, MD
9033 Wilshire Blvd. #206
Beverly Hills, CA 90211

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Doctor Pinhas:

In accordance with the Bylaws of the Medical Staff of Midway Hospital Medical Center, Article VII, Section 2, you are hereby advised of the Summary Suspension of all your medical staff privileges; including admitting and surgical.

This suspension shall become effective on April 13, 1987, at 3:00 p.m. The Medical Executive Committee of Midway Hospital Medical Center shall convene to review and consider this action within 10 days as specified in the Bylaws.

This is a result of Medical Staff review of your medical records, with consideration as to the questions raised regarding: indications for surgery; appropriateness of surgical procedures in light of patient's medical condition; adequacy of documentation in medical records; and ongoing pattern of identified problems.

EXHIBIT "B"

A copy of Article VII and Article VIII are enclosed for your information.

Sincerely,

Arthur N. Lurvey, MD
Chief of Staff

Mitchell Feldman
Regional Vice-President

[MIDWAY HOSPITAL MEDICAL CENTER
LETTERHEAD DELETED]

April 20, 1987

Simon Pinhas, MD
9033 Wilshire Blvd. #206
Beverly Hills, CA 90211

HAND DELIVERED AND BY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Doctor Pinhas:

Thank you for your statements at the Medical Executive Committee meeting held on April 17, 1987.

Please be advised that the Medical Executive Committee has reviewed and considered the action taken and upheld the summary suspension with a recommendation to terminate your medical staff privileges at Midway Hospital Medical Center. The Board of Directors of Midway Hospital Medical Center has concurred with their recommendation.

Pursuant to the Medical Staff Bylaws, Article VIII, you are entitled to a hearing as outlined in Section 1.a. You have ten days from the date of receipt of this letter to request a hearing by a Judicial Review Committee. Said request shall be by written notice send by certified mail to the Chief Executive Director of the Hospital. If you fail to request a hearing within the specified time frames the recommended action shall become effective immediately.

EXHIBIT "C"

Enclosed is a copy of Article VIII. Please be advised, per the letter dated April 13, 1987, that summary suspension of all privileges includes admitting and surgical privileges.

Sincerely,

Arthur N. Lurvey, MD
Chief of Staff

MIDWAY HOSPITAL MEDICAL CENTER
MEDICAL STAFF BYLAWS

PREAMBLE

WHEREAS, Midway Hospital Medical Center is an investor-owned Hospital organized under the laws of the State of California; and

WHEREAS, its purpose is to serve as a general acute care hospital providing patient care, education, and research; and

WHEREAS, it is recognized that one of the aims and goals of the medical staff is to strive for quality patient care in the hospital, that the medical staff must work with and is subject to the ultimate authority of the board, and that the cooperative efforts of the medical staff, administration, and board are necessary to fulfill the hospital's aims and goals in providing quality care to its patients; and

THEREFORE, the physicians, dentists, and podiatrists practicing in this hospital hereby organize themselves into a medical staff in conformity with these bylaws.

DEFINITIONS

1. HOSPITAL means Midway Hospital Medical Center of Los Angeles, California.

2. BOARD OF DIRECTORS or BOARD means the governing body of the corporation.

3. EXECUTIVE DIRECTOR is the Chief Executive Officer of the Hospital designated by the Board of Directors to be responsible for all aspects of the hospital

operations, including medical staff liaison and coordination. In the absence of the EXECUTIVE DIRECTOR, the Associate Executive Director shall assume all the responsibilities of the Executive Director.

4. MEDICAL STAFF means the formal organization of all licensed physicians, dentists and podiatrists who are privileged to attend patients in the hospital.

5. MEDICAL EXECUTIVE COMMITTEE or MEC means the executive committee of the medical staff.

6. CLINICAL PRIVILEGES or PRIVILEGES means the permission granted to a practitioner to render specific diagnostic, therapeutic, medical, dental, podiatric, or surgical services.

7. PHYSICIAN means any individual with an M.D. or D.O. degree who is fully licensed to practice medicine in all its phases.

8. PRACTITIONER means, unless otherwise expressly limited, any physician, dentist, or podiatrist applying for, or exercising clinical privileges in this hospital.

9. SPECIFIED PROFESSIONAL PERSONNEL means an individual, other than a licensed physician, dentist, or podiatrist, who exercises independent judgment within the areas of his professional competence and who is qualified to render direct or indirect medical, dental, podiatric, or surgical care under the supervision of a practitioner who has been accorded privileges to provide such care in the hospital.

10. MEDICAL STAFF YEAR means the period from January 1st to December 31st.

11. EX OFFICIO means service as a member of a body by virtue of an office or position held and, unless

otherwise expressly provided, means without voting rights.

12. SPECIAL NOTICE means written notification sent by certified or registered mail, return receipt requested.

13. MEDICO-ADMINISTRATIVE OFFICER means a practitioner engaged by the hospital on a full-time or part-time basis to perform duties which, although partially administrative, include clinical responsibilities.

14. As used in the Bylaws, the masculine gender includes both masculine and feminine.

ARTICLE I

NAME

The name of this organization shall be Medical Staff of Midway Hospital Medical Center.

ARTICLE VIII

HEARING AND APPEAL PROCEDURES

Section 1. REQUEST FOR HEARING

a. Notice of Decision

In all cases in which a practitioner is entitled to a hearing as set forth herein, he shall have ten (10) days following the date of receipt of written notice of the action giving rise to the right to the hearing, sent registered or certified mail, within which to request a hearing by a judicial review committee hereinafter referred to. Said request shall be by written notice sent certified or registered mail to the Chief Executive Officer. In the event the applicant member does not request a hearing

within the time and in the manner hereinabove set forth, he shall be deemed to have waived his right to a hearing and to any appellate review to which he might otherwise have been entitled and to have accepted the action involved, and it shall thereupon become effective immediately.

b. Grounds for Hearing

Any one or more of the following actions shall constitute grounds for a hearing:

(1) Denial of medical staff membership;

(2) Denial of requested advancement in medical staff membership;

(3) Denial of medical staff reappointment;

(4) Demotion to lower staff reappointment;

(5) Suspension to lower staff category;

(6) Expulsion from medical staff membership;

(7) Denial of requested privileges;

(8) Reduction in privileges;

(9) Suspension of privileges;

(10) Termination of privileges;

(11) Denial of increase in privileges.

c. Time and Place for Hearing

Upon receipt of a request for hearing, the Chief Executive Officer shall deliver such request to the Chief of Staff or designee. The Chief Executive Officer or his designee shall, within ten (10) days after receipt of such request, schedule and arrange for a hearing. The Chief Executive Officer or his designee shall give notice to the affected practitioner of the time, place, and date of the hearing.

The date of the hearing shall be within forty-five (45) days from the date of receipt of the request for a hearing by the Chief Executive Officer. When the request is received from a member who is under suspension, which is then in effect, the hearing shall be held as soon as the arrangements may reasonably be made, but not to exceed fifteen (15) days from the date of receipt of the request for a hearing.

d. Notice of Charges

The notice of hearing shall state in concise language the acts of omissions with which the practitioner is charged, a list of any charts under question by chart number or where the issue involves any of the actions set out in Section 1,b. of Article VIII, the reasons for the denial of the request of the applicant or medical staff member.

e. Judicial Review Committee

When a hearing is requested, the Chief of Staff, with the approval of the Medical Executive Committee, shall appoint a judicial review committee which shall be composed of not less than five (5) members of the active medical staff to act pursuant to this Article. The members of the judicial review committee shall not have actively participated in the consideration of the matter involved at any previous level. Such appointment shall include designation of the chairman. Knowledge of the matter involved shall not preclude a member of the active medical staff from serving as a member of the judicial review committee. In the event that it is not possible to appoint a fully qualified judicial review committee from the active medical staff, the Medical Executive Committee may appoint qualified physicians from the associate staff or physicians outside the staff.

f. Postponements and Extensions

Postponements and extensions of time beyond the times expressly permitted in these bylaws may be requested by anyone but shall be permitted by the judicial review committee only on a showing of good cause.

g. Decision of the Hearing Committee

Within thirty (30) days after final adjournment of the hearing, except in the case of a medical staff member who shall be under suspension and then within fifteen (15) days, the judicial review committee shall render a decision which shall be delivered to the Medical Executive Committee and to the Governing Board, such decision to be accompanied by a written report, all other documentation, and the hearing record if prepared. The report shall contain a concise statement of the reasons for the decision, and a copy of the report and decision shall be delivered, by registered or certified mail, to the affected practitioner.

h. Appeal

The decision of the judicial review committee shall be considered final, subject to the right of appeal as provided in Section 3 (Appeal to Governing Board) of this Article.

Section 2. HEARING PROCEDURE

a. Personal Presence Mandatory

Under no circumstances shall the hearing be conducted without the personal presence of the person requesting the hearing unless he has waived such appearance or has failed without good cause to appear after appropriate notice. Such failure to appear shall be deemed to constitute a waiver of the right to such appearance. This does not waive the right to appeal to the Governing Board.

b. Representation

The affected practitioner shall be entitled to be accompanied by and/or represented at the hearing by a member of the medical staff in good standing, except if the member of the medical staff is also an attorney. Since the hearings provided for in these bylaws are for the purpose of intra-professional competency or conduct, neither the person requesting the hearing, the Medical Executive Committee, nor the Governing Board shall be represented in any phase of the hearing or appeals procedure by an attorney at law unless the hearing committee, in its discretion, permits both sides to be represented by legal counsel. The body whose decision prompted the hearing shall appoint a representative from the medical staff to present its recommendations in support thereof and to examine witnesses.

c. The Presiding Officer

The presiding officer at the hearing shall be the chairman or the hearing officer if one is appointed. The presiding officer shall act to insure that all participants in the hearing have a reasonable opportunity to be heard, and to present all oral and documentary evidence, and that decorum is maintained. He shall determine the order or procedure during the hearing and shall have the authority and discretion in accordance with these bylaws to make all rulings on questions which pertain to matters of law and to the admissibility of evidence.

d. The Hearing Officer

At the request of the person who requested the hearing, the Executive Committee, the Judicial Review Committee, or on its own initiative, the Governing Board may appoint a hearing officer who may be an attorney at law to preside at the hearing. Such hearing officer may be legal counsel

to the hospital provided he acts during the hearing in accord with this Article. He must not act as a prosecuting officer, as an advocate for the hospital, Governing Board, or Medical Executive Committee, or body whose action prompted the hearing. If requested by the Judicial Review Committee, he may participate in the deliberation of such body and be a legal advisor to it, but he shall not be entitled to vote.

e. Record of Hearing

The Judicial Review Committee must maintain a record of the hearing by one of the following methods: a shorthand reporter present to make a record of the hearing or a recording. The cost of such shorthand reporter's appearance shall be borne by the hospital and the party requesting the hearing, provided the cost of transcribing the record of the hearing shall be borne by the party requesting the transcription. The hearing committee may, but shall not be required to, order that oral evidence shall be taken only on oath or affirmation administered by any person designated by such body and entitled to notarize documents in the State of California.

f. Rights of the Parties

At a hearing, both the affected practitioner and the body whose action prompted the hearing shall have the following rights: to call and examine witnesses, to introduce exhibits, to cross-examine any witness on any matter relevant to the issues, to impeach any witness and to rebut any evidence. If the affected practitioner does not testify in his own behalf, he may be called and examined as if under cross-examination. The presiding officer in the exercise of his discretion may limit testimony that is cumulative.

g. Admissibility of Evidence

The hearing shall not be conducted according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant evidence shall be admitted by the presiding officer if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence, in a court of law. Each party shall have the right to submit written argument, and the judicial review committee may request such a writing to be filed following the close of the hearing. The judicial review committee may interrogate the witnesses or call additional witnesses if it deems it appropriate.

h. Official Notice

The presiding officer shall have the discretion to take official notice of any matters either technical or scientific, relating to the issues under consideration which could have been judicially noticed by the courts of this State. Participants in the hearing shall be informed of the matters to be officially noticed or to refute the noticed matters by evidence or by written or oral presentation of authority. Reasonable or additional time shall be granted, if requested, to present written rebuttal of any evidence admitted on official notice.

i. Basis of Decision

The decision of the hearing committee shall be based on the evidence produced at the hearing. This evidence may consist of the following:

1) Oral testimony of witnesses;

2) Briefs or written arguments presented in connection with the hearing;

3) Any material contained in the medical staff's personnel files regarding the person who requested the hearing;

4) Any and all applications, references and accompanying documents;

5) All officially noticed matters;

6) Any other evidence deemed admissible under Section 2,g. of this Article.

j. Burden of Proof

In all cases specified in Section 1,b. of this Article, it shall be incumbent on the person who requested the hearing to initially come forward with evidence in his support. Thereafter, the burden shall shift to the body or committee whose decision prompted the hearing to come forward with evidence in support of its action or decision.

In all cases in which a hearing is conducted under this Article, after all the evidence has been submitted by both sides, the Judicial Review Committee shall rule against the person who requested the hearing unless it finds that he or she has proved by a preponderance of the evidence, that the decision that prompted the hearing was arbitrary or unreasonable, and should not be sustained by the evidence.

k. Adjournment and Conclusion

The presiding officer may adjourn the hearing and reconvene the same at the convenience of the participants without special notice. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Judicial Review Committee shall thereupon, within the time limit specified in Section 1,g. of this Article, outside of the presence of any other person, conduct its deliberations and render a decision and ac-

companying report as provided by Section 1 of this Article.

Section 3. APPEAL TO GOVERNING BOARD

a. Time for Appeal

Within ten (10) days after receipt of the decision of the Judicial Review Committee, either the person who requested the hearing or the body whose decision prompted the hearing may request an appellate review by the Governing Board. The request shall be delivered to the Governing Board in writing and delivered either in person or by certified or registered mail. If such appellate review is not requested within such period, both sides shall be deemed to have accepted the action involved and it shall thereupon become final and shall be effective immediately. The written request for appeal shall also include a brief statement as to the reasons for appeal.

b. Grounds for Appeal

The grounds for appeal from the hearing shall be: 1) substantial failure of the hearing committee, Medical Executive Committee, or Governing Board to comply with the procedures required by this Article or by the hospital medical staff bylaws in the conduct of hearing and decisions upon hearing so as to deny a fair hearing; 2) action taken arbitarily or capriciously.

c. Time, Place, and Notice

In the event of any appeal to the Governing Board as set forth in the preceding subsection, the Governing Board shall, within ten (10) days after receipt to such notice of appeal, schedule a date for such review. The Governing Board through the Executive Director, shall notify the affected practitioner by certified or registered mail of the time, place, and date of the appellate review.

The date of appellate review shall not be less than fifteen (15) days, nor more than forty-five (45) days from the date of receipt of the request for appellate review, provided, however, that when a request for appellate review is from a member who is under suspension which is then in effect, the appellate review shall be held as soon as the arrangements may reasonably be made and not to exceed fifteen (15) days from the date of receipt of the request for appellate review unless additional time is required to complete the record. The time for appellate review may be extended by the chairman of the Governing Board for a good cause.

d. Hearing Officer

The Governing Board may appoint a hearing officer to preside over its hearing who may be the same or a different hearing officer as the one who presided over the hearing of the Judicial Review Committee. The same rules set forth above with respect to the hearing officer for the Judicial Review Committee shall apply to the hearing officer for the hearing before the Governing Board.

e. Nature of Appellate Review

The proceedings by the governing Board shall be in the nature of an appellate hearing based upon the record of the hearing before the Judicial Review Committee, provided that the Governing Board may, in its sole discretion, accept additional oral or written evidence subject to the same rights of crossexamination or confrontation provided at the original hearing. Each party shall have the right to present, within ten (10) days prior to the date of the review, a written statement in support of his position on appeal, and in its sole discretion, the Governing Board may allow each party or representative to personally appear and make oral argument. At the conclu-

sion of oral argument, if allowed, the Governing Board may thereupon at a time convenient to itself conduct deliberations outside the presence of the appellant and respondent and their representatives. The Governing Board may affirm, modify, or reverse the decision of the Judicial Review Committee.

f. Final Decision

Within ten (10) days after the conclusion of the appellate review, the Governing Board shall render a final decision in writing and shall deliver copies thereof to the affected practitioner and to the Medical Executive Committee in person or by certified or registered mail. The final decision of the Governing Board following the appeal shall be effective immediately and shall not be subject to further review.

g. Right to One Hearing Only

Except as otherwise provided in this Article, an affected practitioner shall be entitled as a matter of right to only one hearing before the Judicial Review Committee and one hearing before the Governing Board on any single matter which may be the subject of an appeal without regard to whether such subject is the result of action by the Medical Executive Committee or the Governing Board, or a combination of acts of such bodies.

ARTICLE IX

SPECIFIED PROFESSIONAL PERSONNEL

Section 1. APPOINTMENT AND ASSIGNMENT

Specified professional personnel, sometimes referred to as "allied health professionals", may be authorized by the medical staff to perform their professional services within

the hospital. They shall be individually authorized and assigned to an appropriate clinical department and shall carry out their professional activities under the supervision of the chairman of the department, or the appropriate attending staff member assigned responsibility, and subject to departmental policies and procedures.

Section 2. QUALIFICATIONS

a. The general qualifications to be required of members of each category of specified professional personnel shall be determined by the appropriate department concerned. The chairman of the department concerned shall submit a listing of such qualifications to the Medical Executive Committee for approval.

b. Specified professional personnel shall not be eligible for appointment of membership on the Medical Staff. Nothing herein shall create any vested rights in any Specified Professional Personnel to receive or to maintain any privileges in the Hospital. The provisions of Article VII and Article III of these bylaws shall not apply to specified professional personnel.

c. Each individual in this category shall have an appropriate application on file, and their department shall review and approve such. The application shall include evidence of licensure, training, and documentation of malpractice insurance.

April 30, 1987

DELIVERED BY TELECOPIER,
HAND DELIVERED, AND
MAILED VIA CERTIFIED MAIL — RETURN
RECEIPT REQUESTED

Arthur N. Lurvey, M.D.
Chief of Staff
Midway Hospital Medical Center
5925 San Vicente Boulevard
Los Angeles, CA 90019

Re: Medical Staff Privileges

Dear Dr. Lurvey:

Please be advised that I represent Simon J. Pinhas, M.D. and I am authorized on his behalf to demand a hearing upon his summary suspension of medical staff privileges from Midway Hospital Medical Center ("Midway Hospital") and the Medical Staff of Midway Hospital Medical Center ("Medical Staff"). Dr. Pinhas demands that the hearing and the notice of charges be in conformity with the rights afforded to Dr. Pinhas by the Constitutions of the State of California and of the United States, the laws of the State of California, the contractual obligations imposed upon Midway Hospital and the Medical Staff, and to the extent that they are not inconsistent therewith, the Bylaws of the Medical Staff.

1. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests full disclosure of all charges against him with sufficient particularity that he may investigate and rebut those charges.

EXHIBIT "E"

2. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas demands that all proceedings be reported by a certified shorthand reporter.

3. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests access to the originals and a photocopy of all charts in their full, complete, and unaltered state, which have been used *or considered* in connection with bringing charges against Dr. Pinhas.

4. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a hearing officer who is a retired judge of the Superior Court, or, in the alternative, someone whose impartiality cannot be questioned. Further, Dr. Pinhas requests that the identity of the hearing officer be made known as soon as possible so that pre-hearing motions may be submitted to him and determine in advance of the hearing, including, but not limited to, motions to compel compliance with the demands herein made.

5. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the minutes of any meeting of any members of the staff of Midway Hospital or its Medical Staff in connection with considering to bring and the bringing of any charges against him.

6. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests all writings, as that term is defined by Section 250 of the California Evidence Code, and all copies which in any way are different therefrom, regarding any communication regarding his medical staff privileges or his performance as a physician at Midway Hospital.

7. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests all writings which are exculpatory to any charges or any sanction which might be sought to be imposed.

8. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a list of all witnesses to any of the events

involving the charges whether or not they are intended to be called at the time of the hearing.

9. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a list of all witnesses who the Hospital intends to call at the time of the hearing.

10. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a written summary of the direct testimony of all witnesses who will be called in the proceedings against him.

11. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the opportunity to interview all witnesses who may be called as witnesses against him.

12. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the assurance that the Hospital shall require its employees who he designates and the Medical Staff shall require that all of its members, as required by the Bylaws, be available to testify, if so requested by Dr. Pinhas, at the hearing in this matter.

13. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that all reports of expert witnesses to be called by the Hospital be submitted to him no less than 10 days prior to their being called as witnesses and that the Hospital be precluded from calling any expert witness if such report is not made available.

14. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a hearing panel composed of physicians not members of the staff of Midway Hospital and that all members of the hearing panel be free of bias, prejudice, prejudgment and not possessed of any information regarding any of the charges in advance of the hearing.

15. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the identity of the members of the hearing panel

be disclosed to him as soon as possible so that he may determine whether or not to file motions for disqualifications in advance of the hearing date.

16. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that the hearing panel be instructed immediately upon selection that they are not to discuss this matter with any person, including, but not limited to, the person or persons who will represent the Hospital or the Medical Staff or any witnesses that the Hospital may call. In the event that such discussion is had with them, they are required to report it immediately to Dr. Pinhas or his counsel and possibly volunteer their disqualification from the case.

17. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that all witnesses who are intended to be called at the hearing be instructed not to discuss the matter with any members of the hearing panel.

18. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the right to be represented by a physician who is also an attorney at the hearing. He requests that this physician who is also an attorney present and argue motions on his behalf, examine and cross-examine witnesses, may introduce evidence, and fully and completely participate in the hearing and protect the record.

19. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that he be represented by an attorney at the hearing. He request that this attorney present and argue motions on his behalf, examine and cross-examine witnesses, may introduce evidence, and fully and completely participate in the hearing and protect the record.

20. Pursuant to all of his rights, in the event that either or both of the above requests are denied, he request that his attorney appear in the hearings to make all legal

arguments to protect his record, introduce evidence, and to cross-examine witnesses, or in some fashion be permitted to participate in the hearing.

21. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that in the event that the above three requests are denied, he requests the opportunity to have his attorney sit in the hearing and advise him during the course of proceedings without actual participation in the hearing.

22. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas demands production of all communications with the Department of Health Services or any governmental agency regarding his practice of medicine.

23. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas demands production of all contracts between Midway Hospital or Summit, or any affiliates, parents or subsidiaries, with any member of the Medical Staff for purposes of determining bias, interest or for purposes of impeachment or any other appropriate evidentiary purpose.

24. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas demands the identification of all persons selected as a hearing officer and all persons selected by the Hospital sit on the panel so that he may have time to investigate their impartiality, determine whether to conduct appropriate voir dire examination, or to seek, other relief in connection with their appointment.

Pursuant to my agreement with Mr. Kadzielski of Weissburg & Aronson, this demand signed by me is timely and effective if served upon you (or a person in charge) at the Administrator's office at the Hospital or delivered to you (or a person in charge) at your office, or telecopied to Mark Kadzielski at his office before midnight, April 30, 1987.

Sincerely,

Lawrence Silver

cc: Arthur N. Lurvey, M.D. (Hand Delivered)
435 N. Roxbury, Suite 100
Beverly Hills, CA 90210

Simon J. Pinhas, M.D.
Mark Kadzielski, Esq.

[MIDWAY HOSPITAL MEDICAL CENTER LETTERHEAD DELETED]

May 7, 1987

Simon Pinhas, MD
9033 Wilshire Blvd. #206
Beverly Hills, CA 90211

BY: Certified Mail
HAND
DELIVERED:
(5/7/87)

Dear Dr. Pinhas:

This letter is in response to your request for a hearing at Midway Hospital Medical Center related to your summary suspension and the recommendation to terminate your medical staff membership. Pursuant to Article VIII, Section I.c., this hearing will be held at 6:30 p.m. on May 12, 1987 in the Pavilion Conference Room.

A Judicial Review Committee has been appointed by the Chief of Staff. Its Chairman is Ellis Berkowitz, MD, and its members are: John Hofbauer, MD; Jay Jordan, MD: Debra Judelson, MD; Alan Kessler, MD; Dwight Makoff, MD and Stephen Seiff, MD. These committee members have been advised not to discuss this matter with you or any other member of the Hospital's Medical Staff.

The decisions to summarily suspend and to terminate your membership at Midway Hospital Medical Center were based on reviews of your patient records involving ophthalmological surgeries conducted at this Hospital in

1987. These reviews concluded that your conduct of patient care was below the acceptable standard of care in this Hospital.

The specific charges that support this conclusion, and the specific charts that support these charges are as follows:

1. JUDGMENT TO PROCEED WITH SURGERY NOT WITHIN STANDARD OF CARE IN HOSPITAL.

A. No History and Physical on patient chart prior to surgery:

Chart #7071027	Chart #7066244
Chart #7070713	Chart #7063199
Chart #7070489	Chart #7059728
Chart #7070403	Chart #7059574
Chart #7070179	Chart #7029896/
Chart #7067615	2885069

B. Incomplete Pre-Operative workup:

Chart #7087136	Chart #7075332
Chart #7084633	Chart #7073054
Chart #7084609	Chart #7072376
Chart #7084595	Chart #7070543
Chart #7083955	Chart #7070004
Chart #7082142	Chart #7069979
Chart #7081316	Chart #7068204
Chart #7079249	Chart #7067836
Chart #7078307	Chart #7066244
Chart #7078293	Chart #7065167
Chart #7078285	Chart #7065094
Chart #7078145	Chart #7063059
Chart #7078072	Chart #7062664
Chart #7075979	Chart #7059639
Chart #7075936	Chart #7059612
Chart #7075928	Chart #7057172
Chart #7075375	Chart #7051832

C. Surgery contraindicated by patients' medical condition:

Chart #7087365
Chart #7087136
Chart #7084663
Chart #7084609
Chart #7083998
Chart #7082142
Chart #7081316
Chart #7079249
Chart #7078102
Chart #7075936
Chart #7075529
Chart #7072392
Chart #7072376
Chart #7070446
Chart #7068204
Chart #7065183/2909006
Chart #7065094
Chart #7065035
Chart #7062664
Chart #7062664
Chart #7059639
Chart #7059612
Chart #7056915
Chart #7054459
Chart #7029896/2885069

2. FAILURE TO OBTAIN REQUIRED CONSENT FOR PROCEDURE PERFORMED.

A. Lack of appropriate consent for procedure performed:

Chart #7068204
Chart #7067674
Chart #7066244
Chart #7065086/2908727
Chart #7063318

B. Lack of informed consent for surgery:

Chart #7085788
Chart #7084099
Chart #7081936
Chart #7081928
Chart #7079397
Chart #7079389
Chart #7078293
Chart #7078129
Chart #7075456
Chart #7072422
Chart #7068182
Chart #7068107
Chart #7065019
Chart #7062699
Chart #7057172

C. No IntraOcular Lens Consent:

Chart #7084692	Chart #7065086/
Chart #7084684	2908727
Chart #7083947	Chart #7063318
Chart #7082142	Chart #7062699
Chart #7079273	Chart #7062672
Chart #7072724	Chart #7062605
Chart #7070713	Chart #7062532
Chart #7070535	Chart #7059639
Chart #7067585	Chart #7057687
Chart #7066244	Chart #7057563
Chart #7065153	Chart #7057172
Chart #7065132	Chart #7029896/
	2885069

3. NO ASSISTANT AT SURGERY AS REQUIRED BY MEDICAL STAFF BYLAWS:

Chart #7057644	Chart #7057563
Chart #7057636	Chart #7057555
Chart #7057628	Chart #7057547

The Judicial Review Committee has been polled with regard to your requests for representation by counsel, pursuant to Article VIII., Section 2.b. You are hereby advised that the Committee has unanimously voted not to permit either you or the Medical Staff to be represented by an attorney at law at the hearing. You are entitled, as that section indicates, to be represented by a member of the Medical Staff in good standing. If you will be represented by a staff member, please inform the undersigned of the identity of that person so that further communication regarding this matter can also be directed to that person.

A Hearing Officer, Richard Posell, Esq., has been appointed by the Governing Board. Mr. Posell is a part-

ner in the law firm of Shapiro, Posell & Close and is experienced at conducting hearings of this type at hospitals. A certified shorthand reporter has also been ordered to maintain a record of the hearing.

If you wish to review the charts in question prior to the hearing, please contact Peggy Farber RN, Director of Quality Assurance at 932-5231 or 932-5022 to make these arrangements. If copies of these records are requested, arrangements can be made with Ms. Farber after you have completed the appropriate Non-Disclosure Agreement. Copies will be handled at your own expense.

The hearing will be conducted pursuant to the provisions of Article VIII of the Midway Hospital Medical Center Medical Staff Bylaws. Those Bylaws do not provide for pre-hearing discovery of any documents or information related to the proceedings. Additionally, the Hospital does not have subpoena power or other powers to compel any one to testify at a medical staff hearing.

While the Medical Staff is not required under the Bylaws to provide you with a list of witnesses it intends to call at the hearing, the following is a list of those persons who are currently expected to testify on behalf of the Medical Staff at the hearing: Alan Friedman, MD; Arthur Lurvey, MD; Jonathan Macy, MD; James Salz, MD and Maurice Schmir, MD. the Medical Staff reserves the right to add to this list, or delete from it at any time.

Please provide the undersigned with a list of your witnesses as soon as possible.

Very truly yours,

Mitchell Feldman
Regional Vice-President

cc: Lawrence Silver, Esq.

[CAPTION DELETED]

RESPONDENT'S OBJECTIONS TO THE NOTICE OF HEARING DATED MAY 7, 1987

COMES NOW Simon J. Pinhas, M.D., Respondent, appearing specially and without waiving any rights to challenge the jurisdiction of this committee and other deficiencies in the notice, and hereby notifies the Judicial Review Committee of his objections to the hearing date as noticed herein. Respondent and his counsel in support thereof allege the following facts to be true:

1. By letter dated April 13, 1987, Dr. Pinhas was advised by Midway Hospital Medical Center ("Midway") that he was summarily suspended as of that date of all medical staff, including admitting and surgical, privileges. The letter stated that such action was the result of a: "medical staff review of Dr. Pinhas's medical records, with consideration as to the questions raised regarding: indication for surgery; appropriateness of surgical procedures in light of patient's medical condition; adequacy of documentation in medical records; and ongoing pattern of identified problems." (A copy of the April 13 letter is attached hereto as Exhibit "1".)

2. By the same letter, Dr. Pinhas was advised that the Midway Medical Executive Committee would convene to review and consider the action within 10 days.

3. On April 20, Dr. Pinhas, while present at Midway in connection with other matters, was beckoned to attend — immediately — a meeting. He did so, and this meeting

turned out to be the Midway Medical Executive Committee ("Executive Committee") meeting.

4. The Executive Committee requested that Dr. Pinhas make a statement. Lacking notice, unprepared, confused and without benefit of legal or fellow staff advice, he did so briefly.

5. By letter dated April 20, 1987, Midway notified Dr. Pinhas that the Medical Executive Committee had upheld the summary suspension with a recommendation to terminate his staff privileges at Midway. He was also informed that the Midway Board of Directors had concurred with the Executive Committee's recommendation. (A copy of the April 20 letter is attached hereto as Exhibit "2".)

6. In accordance with the Midway Medical Staff Bylaws, Dr. Pinhas requested a hearing by the Judicial Review Committee by letter dated April 30, 1987. (A copy of the April 30 letter is attached hereto as Exhibit "3".)

7. On May 7, 1987, counsel for respondent telephoned counsel for Midway to determine the status of the notice of hearing herein. Counsel for respondent was advised that a letter representing such notice would be hand-delivered that day.

8. On the same day, May 7, counsel for respondent telephoned once again, after 5:00 p.m., to ascertain the whereabouts of the notice of hearing. After 5:30 p.m., the notice of hearing was delivered. (A copy of the May 7 letter is attached hereto as Exhibit "4".)

9. The notice of hearing scheduled this matter to be heard at 6:30 p.m. on May 12, 1987.

10. Respondent was thereby informed of the charges, albeit inadequately, and allowed as notice only two busi-

ness days — with an intervening weekend — to prepare a defense in this matter.

11. Under these circumstances, proceeding with the hearing as scheduled would not only work a hardship to respondent, be detrimental to reasonable preparation, but would also constitute an obvious deprivation of fair procedure and due process.

12. The notice of hearing itself is deficient, lacking as it does specificity and detail. Although the notice sets forth what it labels "specific charges" and lists "specific charts" it contends will support those charges, the charges are rendered in broad, general terms.

13. The identified charts as of the date of this Objection, have *not* been made available, and are *not* available, to respondent or his counsel. Approximately 128 charts are identified, though some appear to be duplicates.

14. Furthermore, the "notice" does not provide the name of the prosecuting medical staff representative, and summarily — and in a self-serving prophylactic fashion — dismisses anticipated respondent requests that more properly should be heard on motion before the Judicial Review Committee.

15. Moreover, the Midway Medical Staff Bylaws contemplate that the Chief Executive Officer or a designee member of the Medical Staff shall execute the notice of the hearing. In this additional regard, the notice of hearing lacks authentication and is defective.

16. Simply stated, the "notice" does not provide a reasonable quantum of time in which respondent can prepare, present and have decided the preliminary motions that must be resolved — with respect to procedure and substance herein — prior to the hearing in this matter.

17. Without more specific information, without possession and sufficient review and analysis of documentary evidence, the hearing as established and scheduled, contravenes respondent's rights, under the United States and California Constitutions, the laws of the State of California, and the contractual obligations imposed upon Midway Hospital and the Medical Staff, to fair notice and a rational and meaningful opportunity to be heard.

WHEREFORE, respondent requests that the Judicial Review Committee sustain his objections and dismiss the notice of hearing as totally defective.

DATED: May 8, 1987

[SIGNATURE DELETED]

[MIDWAY HOSPITAL MEDICAL CENTER LETTERHEAD DELETED]

Simon Pinhas, MD
9033 Wilshire Blvd. # 206
Beverly Hills, CA 90211

April 13, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Doctor Pinhas:

In accordance with the Bylaws of the Medical Staff of Midway Hospital Medical Center, Article VII, Section 2, you are hereby advised of the Summary Suspension of all your medical staff privileges; including admitting and surgical.

This suspension shall become effective on April 13th, 1987, at 3:00 p.m. The Medical Executive Committee of Midway Hospital Medical Center shall convene to review and consider this action within 10 days as specified in the Bylaws.

This is a result of Medical Staff review of your medical records, with consideration as to the questions raised regarding: indications for surgery; appropriateness of surgical procedures in light of patient's medical condition; adequacy of documentation in medical records; and ongoing pattern of identified problems.

A copy of Article VII and Article VIII are enclosed for your information.

Sincerely,

Arthur N. Lurvey, MD
Chief of Staff

Mitchell Feldman
Regional Vice-President

EXHIBIT "1"

[MIDWAY HOSPITAL MEDICAL CENTER LETTERHEAD DELETED]

Simon Pinhas, MD
9033 Wilshire Blvd. # 206
Beverly Hills, CA 90211

April 20, 1987

HAND DELIVERED AND BY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Doctor Pinhas:

Thank you for your statements at the Medical Executive Committee meeting held on April 17, 1987.

Please be advised that the Medical Executive Committee has reviewed and considered the action taken and upheld the summary suspension with a recommendation to terminate your medical staff privileges at Midway Hospital Medical Center. The Board of Directors of Midway Hospital Medical Center has concurred with their recommendation.

Pursuant to the Medical Staff Bylaws, Article VIII, you are entitled to a hearing as outlined in Section 1.a . . You have ten days from the date of receipt of this letter to request a hearing by a Judicial Review Committee. Said request shall be by written notice send [sic] by certified mail to the Chief Executive Director of the Hospital. If you fail to request a hearing within the specified time frames the recommended action shall become effective immediately.

Enclosed is a copy of Article VIII. Please be advised, per the letter dated April 13, 1987, that summary suspension of all privileges includes admitting and surgical privileges.

Sincerely,

Arthur N. Lurvey, M.D.
Chief of Staff

EXHIBIT "2"

April 30, 1987

DELIVERED BY TELECOPIER,
HAND DELIVERED, AND
MAILED VIA CERTIFIED MAIL —
RETURN RECEIPT REQUESTED

Arthur N. Lurvey, M.D.
Chief of Staff
Midway Hospital Medical Center
5925 San Vicente Boulevard
Los Angeles, CA 90019

Re: Medical Staff Privileges

Dear Dr. Lurvey:

Please be advised that I represent Simon J. Pinhas, M.D. and I am authorized on his behalf to demand a hearing upon his summary suspension of medical staff privileges from Midway Hospital Medical Center ("Midway Hospital") and the Medical Staff of Midway Hospital Medical Center ("Medical Staff"). Dr. Pinhas demands that the hearing and the notice of charges be in conformity with the rights afforded to Dr. Pinhas by the Constitutions of the State of California and of the United States, the laws of the State of California, the contractual obligations imposed upon Midway Hospital and the Medical Staff, and to the extent that they are not inconsistent therewith, the Bylaws of the Medical Staff.

1. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests full disclosure of all charges against him with sufficient particularity that he may investigate and rebut those charges.

EXHIBIT "3"

2. Pursuant to all of Dr. Pinhas's right, Dr. Pinhas demands that all proceedings be reported by a certified shorthand reporter.

3. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests access to the originals and a photocopy of all charts in their full, complete, and unaltered state, which have been used *or considered* in connection with bringing charges against Dr. Pinhas.

4. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a hearing officer who is a retired judge of the Superior Court, or, in the alternative, someone whose impartiality cannot be questioned. Further, Dr. Pinhas requests that the identity of the hearing officer be made known as soon as possible so that pre-hearing motions may be submitted to him and determine [sic] in advance of the hearing, including, but not limited to, motions to compel compliance with the demands herein made.

5. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the minutes of any meeting of any members of the staff of Midway Hospital or its Medical Staff in connection with considering to bring and the bringing of any charges against him.

6. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests all writings, as that term is defined by Section 250 of the California Evidence Code, and all copies which in any way are different therefrom, regarding any communication regarding his medical staff privileges or his performance as a physician at Midway Hospital.

7. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests all writings which are exculpatory to any charges or any sanction which might be sought to be imposed.

8. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a list of all witnesses to any of the events

involving the charges whether or not they are intended to be called at the time of the hearing.

9. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a list of all witnesses who the Hospital intends to call at the time of the hearing.

10. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a written summary of the direct testimony of all witnesses who will be called in the proceedings against him.

11. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the opportunity to interview all witnesses who may be called as witnesses against him.

12. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the assurance that the Hospital shall require its employees who he designates and the Medical Staff shall require that all of its members, as required by the Bylaws, be available to testify, if so requested by Dr. Pinhas, at the hearing in this matter.

13. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that all reports of expert witnesses to be called by the Hospital be submitted to him no less than 10 days prior to their being called as witnesses and that the Hospital be precluded from calling any expert witness if such report is not made available.

14. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests a hearing panel composed of physicians not members of the staff of Midway Hospital and that all members of the hearing panel be free of bias, prejudice, prejudgment and not possessed of any information regarding any of the charges in advance of the hearing.

15. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the identity of the members of the hearing panel

be disclosed to him as soon as possible so that he may determine whether or not to file motions for disqualifications in advance of the hearing date.

16. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that the hearing panel be instructed immediately upon selection that they are not to discuss this matter with any person, including, but not limited to, the person or persons who will represent the Hospital or the Medical Staff or any witnesses that the Hospital may call. In the event that such discussion is had with them, they are required to report it immediately to Dr. Pinhas or his counsel and possibly volunteer their disqualification from the case.

17. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that all witnesses who are intended to be called at the hearing be instructed not to discuss the matter with any members of the hearing panel.

18. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests the right to be represented by a physician who is also an attorney at the hearing. He requests that this physician who is also an attorney present and argue motions on his behalf, examine and cross-examine witnesses, may introduce evidence, and fully and completely participate in the hearing and protect the record.

19. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that he be represented by an attorney at the hearing. He request [sic] that this attorney present and argue motions on his behalf, examine and cross-examine witnesses, may introduce evidence, and fully and completely participate in the hearing and protect the record.

20. Pursuant to all of his rights, in the event that either or both of the above requests are denied, he requests that his attorney appear in the hearings to make all

legal arguments to protect his record, introduce evidence, and to cross-examine witnesses, or in some fashion be permitted to participate in the hearing.

21. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas requests that in the event that the above three requests are denied, he requests the opportunity to have his attorney sit in the hearing and advise him during the course of proceedings without actual participation in the hearing.

22. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas demands production of all communications with the Department of Health Services or any governmental agency regarding his practice of medicine.

23. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas demands production of all contracts between Midway Hospital or Summit, or any affiliates, parents or subsidiaries, with any member of the Medical Staff for purposes of determining bias, interest or for purposes of impeachment or any other appropriate evidentiary purpose.

24. Pursuant to all of Dr. Pinhas's rights, Dr. Pinhas demands the identification of all persons selected as a hearing officer and all persons selected by the Hospital sit on the panel so that he may have time to investigate their impartiality, determine whether to conduct appropriate voir dire examination, or to seek other relief in connection with their appointment.

Pursuant to my agreement with Mr. Kadzielski of Weissburg & Aronson, this demand signed by me is timely and effective if served upon you (or a person in charge) at the Administrator's office at the Hospital or delivered to you (or a person in charge) at your office, or telecopied to Mark Kadzielski at his office before midnight, April 30, 1987.

Sincerely,

Lawrence Silver

cc: Arthur N. Lurvey, M.D. (Hand Delivered)
435 N. Roxbury, Suite 100
Beverly Hills, CA 90210

Simon J. Pinhas, M.D.

Mark Kadzielski, Esq.

[MIDWAY HOSPITAL MEDICAL CENTER LETTERHEAD DELETED]

May 7, 1987

Simon Pinhas, MD
9033 Wilshire Blvd. #206
Beverly Hills, Ca 90211

By: CERTIFIED MAIL
HAND DELIVERED:
(5/7/87)

Dear Doctor Pinhas:

This letter is in response to your request for a hearing at Midway Hospital Medical Center related to your summary suspension and the recommendation to terminate your medical staff membership. Pursuant to Article VIII, Section I.c., this hearing will be held at 6:30 p.m. on May 12, 1987 in the Pavilion Conference Room.

A Judicial Review Committee has been appointed by the Chief of Staff. Its Chairman is Ellis Berkowitz, MD, and its members are: John Hofbauer, MD; Jay Jordan, MD; Debra Judelson, MD; Alan Kessler, MD; Dwight Makoff, MD and Stephen Seiff, MD. These committee members have been advised not to discuss this matter with you or any other member of the Hospital's Medical Staff.

The decisions to summarily suspend and to terminate your membership at Midway Hospital Medical Center were based on reviews of your patient records involving ophthalmological surgeries conducted at this Hospital in 1987. These reviews concluded that your conduct of pa-

tient care was below the acceptable standard of care in this Hospital.

The specific charges that support this conclusion, and the specific charts that support these charges are as follows:

1. JUDGMENT TO PROCEED WITH SURGERY NOT WITHIN STANDARD OF CARE IN HOSPITAL.

A. No History and Physical on patient chart prior to surgery:

Chart #7071027	Chart #7066244
Chart #7070713	Chart #7063199
Chart #7070489	Chart #7059728
Chart #7070403	Chart #7059574
Chart #7070179	Chart #7029896/
Chart #7067615	2885069

B. Incomplete Pre-Operative workup:

Chart #7087136	Chart #7075332
Chart #7084633	Chart #7073054
Chart #7084609	Chart #7072376
Chart #7084595	Chart #7070543
Chart #7083955	Chart #7070004
Chart #7082142	Chart #7069979
Chart #7081316	Chart #7068204
Chart #7079249	Chart #7067836
Chart #7078307	Chart #7066244
Chart #7078293	Chart #7065167
Chart #7078285	Chart #7065094
Chart #7078145	Chart #7063059
Chart #7078072	Chart #7062664
Chart #7075979	Chart #7059639
Chart #7075936	Chart #7059612
Chart #7075928	Chart #7057172
Chart #7075375	Chart #7051832

C. Surgery contraindicated by patients' medical condition:

Chart #7087365	Chart #7070446
Chart #7087136	Chart #7068204
Chart #7084663	Chart #7065183/
Chart #7084609	2909006
Chart #7083998	Chart #7065094
Chart #7082142	Chart #7065035
Chart #7081316	Chart #7062664
Chart #7079249	Chart #7062664
Chart #7078102	Chart #7059639
Chart #7075936	Chart #7059612
Chart #7075529	Chart #7056915
Chart #7072392	Chart #7054459
Chart #7072376	Chart #7029896/
	2885069

2. FAILURE TO OBTAIN REQUIRED CONSENT FOR PROCEDURE PERFORMED.

A. Lack of appropriate consent for procedure performed:

Chart #7068204	Chart #7065086/
Chart #7067674	2908727
Chart #7066244	Chart #7063318

B. Lack of informed consent for surgery:

Chart #7085788	Chart #7078129
Chart #7084099	Chart #7075456
Chart #7081936	Chart #7072422
Chart #7081928	Chart #7068182
Chart #7079397	Chart #7068107
Chart #7079389	Chart #7065019
Chart #7078293	Chart #7062599
	Chart #7057172

C. No IntraOcular Lens Consent:

Chart #7084692	Chart #7065086/
Chart #7084684	2908727
Chart #7083947	Chart #7063318
Chart #7082142	Chart #7062699
Chart #7079273	Chart #7062672
Chart #7072724	Chart #7062605
Chart #7070713	Chart #7062532
Chart #7070535	Chart #7059639
Chart #7067585	Chart #7057687
Chart #7066244	Chart #7057563
Chart #7065153	Chart #7057172
Chart #7065132	Chart #7029896/
	2885069

3. NO ASSISTANT AT SURGERY AS REQUIRED BY MEDICAL STAFF BYLAWS:

Chart #7057644	Chart #7057563
Chart #7057636	Chart #7057555
Chart #7057628	Chart #7057547

The Judicial Review Committee has been polled with regard to your requests for representation by counsel, pursuant to Article VIII., Section 2.b. You are hereby advised that the Committee has unanimously voted not to permit either you or the Medical Staff to be represented by an attorney at law at the hearing. You are entitled, as that section indicates, to be represented by a member of the Medical Staff in good standing. If you will be represented by a staff member, please inform the undersigned of the identity of that person so that further comunication regarding this matter can also be directed to that person.

A Hearing Officer, Richard Posell, Esq., has been appointed by the Governing Board. Mr. Posell is a partner in the law firm of Shapiro, Posell & Close and is

experienced at conducting hearings of this type of hospitals. A certified shorthand reporter has also been ordered to maintain a record of the hearing.

If you wish to review the charts in question prior to the hearing, please contact Peggy Farber RN, Director of Quality Assurance at 932-5231 or 932-5022 to make these arrangmenets. If copies of these records are requested, arrangements can be made with Ms. Farber after you have completed the appropriate Non-Disclosure Agreement. Copies will be handled at your own expense.

The hearing will be conducted pursuant to the provisions of Article VIII of the Midway Hospital Medical Center Medical Staff Bylaws. Those Bylaws do not provide for pre-hearing discovery of any documents or information related to the proceedings. Additionally, the Hospital does not have subpoena power or other powers to compel any one to testify at a medical staff hearing.

While the Medical Staff is not required under the Bylaws to provide you with a list of witnesses it intends to call at the hearing, the following is a list of those persons who are currently expected to testify on behalf of the Medical Staff at the hearing: Alan Friedman, MD; Arthur Lurvey, MD; Jonathan Macy, MD; James Salz, MD and Maurice Schmir, MD. The Medical Staff reserves the right to add to this list, or delete from it at any time. Please provide the undersigned with a list of your witnesses as soon as possible.

Very truly yours,

Mitchell Feldman
Regional Vice-President

cc: Lawrence Silver, Esq.

May 8, 1987

HAND DELIVERY
Richard Posell, Esq.
Shapiro, Posell & Close
2029 Century Park East
Suite 2600
Los Angeles, CA 90067

Re: Matter of Simon J. Pinhas, M.D.

Dear Mr. Posell:

We have been advised that you have been appointed by the Midway Hospital Governing Board to act as the Hearing officer in connection with the Judicial Review Committee hearing regarding the summary suspension and recommended termination of medical staff membership of Simon J. Pinhas, M.D.

In this respect, we request in order to determine whether to file a challege to your sitting as hearing officer:

1. A full and complete recitation of any and all discussions you have had, or knowledge or information you have, with respect to this matter;

2. A full and complete recitation of any and all relationships and/or involvement you have had, prior to this matter, with Midway Hospital and/or Summit Health, Ltd.;

3. A full and complete recitation of any and all other medical peer review hearings in which you have been involved;

4. A full and complete recitation of any and all business or matters referred to you by Weissburg & Aronson;

EXHIBIT "H"

5. A full and complete recitation of any and all business or matters referred by you to Weissburg & Aronson;

6. A statement as to whether or not you were appointed as Hearing Officer in this matter by, at the behest or request of Weissburg & Aronson; and

7. The amount of compensation you will receive in connection with your appointment and functions as Hearing Officer in this matter.

8. The indentification of any hospitals, or other health care providers that you or your firm represents.

9. Any reason why you might not be able to fully protect Dr. Phinas' rights or to be fair to him in the hearing of this case.

Please find enclosed a copy of Respondent's objections to Notice of Hearing dated May 7, 1987.

Sincerely,

Lawrence Silver

cc: Simon Pinhas, M.D.
with enclosure

LS:wbr

[SHAPIRO, POSELL & CLOSE LETTERHEAD DELETED]

May 11, 1987

HAND DELIVERY

Lawrence Silver, Esq.
9100 Wilshire Boulevard
Suite 360
Beverly Hills, CA 90212

Re: Matter of Simon J. Pinhas, M.D.

Dear Mr. Silver:

I am in receipt of your letter of May 8, 1987, whieh was hand delivered to my office on the afternoon of May 8, 1987. As you know, my appointment as hearing officer in connection with the Judicial Review Committee hearing requested by Simon J. Pinhas, M.D. was made in accordance with the Bylaws of Midway Hospital. Those Bylaws provide, in Article VIII, Section 2d, that a hearing officer may be an attorney at law. There are no other requirements. I can assure you that I am an attorney at law licensed to practice in the state of California.

Furthermore, there is no reason why I cannot be fair to all of the parties in this matter, and I intend to be so. It would be inappropriate for me to respond further to your May 8, 1987 letter.

Very truly yours,

SHAPIRO, POSELL & CLOSE

RICHARD E. POSELL

REP/hh

cc: Midway Hospital Medical Staff Office

EXHIBIT "I"

[CAPTION DELETED]

RESPONDENT'S MOTION FOR DETERMINATION AS TO THE BURDEN OF PROOF IN THE INSTANT PROCEEDING

COMES NOW Simon J. Pinhas, M.D., Respondent, by his attorneys of record, Lawrence Silver A Law Corporation, and hereby requests that the Judicial Review Committee enter an order determining the burden of proof at the hearing herein.

Respondent and his counsel in support thereof allege the following facts to be true:

1. Article VIII, Section 2j of the Midway Hospital Medical Center Medical Staff Bylaws provides:

> "In all cases specified in Section 1, b. of this Article, it shall be incumbent on the person requesting the hearing to initially come forward with evidence in his support. Thereafter the burden shall shift to the body or committee whose decision prompted the hearing to come forward with evidence in support of its actions or decision."

2. Respondent demanded the present hearing upon his summary suspension of medical staff privileges, including admitting and surgical privileges, from Midway Hospital Medical Center.

3. Until May 7, 1987, Dr. Pinhas was not officially notified of the nature of charges to be presented in this proceeding, and only then was he inadequately notified.

4. The Midway Hospital Medical Center Medical Staff Bylaws impose the burden of proof on respondent to

initially come forward with evidence in his support. Article VIII, Section 2j of those Bylaws states:

> "... After all the evidence has been submitted by both sides, the Judicial Review Committee shall rule against the person who requested the hearing unless it finds that he or she has proved by a preponderance of the evidence, that the decision that prompted the hearing was arbitrary or unreasonable, and should not be sustained by the evidence."

5. This provision creates an unfair burden on Respondent in that the Respondent is immediately obliged to prove the negative, *i.e.*, that he did not engage in the conduct alleged.

6. The burden of proof should be on the Hospital because it is making allegations that the Respondent's conduct in connection with patient care was below the acceptable standard of care in the Hospital.

7. None of the allegations made by the Hospital/Medical Staff can be established without the calling of witnesses and Respondent should not be put to the burden of having to call witnesses to disprove something until it is actually proven by the Hospital. Only after cross-examination and the presentation of his own evidence will Respondent be able to meet the charges.

8. The principles of fair procedure and due process guaranteed to Respondent under the California and United States Constitutions cannot be so misconstrued as to condone a proposition so novel as to be inimicable to the established American standard that a party is deemed innocent until proven guilty.

WHEREFORE, it is requested that the Judicial Review Committee enter an order that the burden of proof is

on the Hospital/Medical Staff and that it be the standard of "clear and convincing" evidence.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S REQUEST THAT IN THE EVENT THAT HE IS DENIED THE RIGHT TO REPRESENTATION BY A PHYSICIAN-ATTORNEY AT ALL STAGES OF THE PROCEEDINGS OR BY ATTORNEY LIMITED TO CERTAIN FUNCTIONS IN THE PROCEEDING THAT ALTERNATIVELY RESPONDENT BE GRANTED THE OPPORTUNITY TO HAVE HIS ATTORNEY SIT IN THE HEARING AND ADVISE HIM WITHOUT ACTUAL PARTICIPATION IN THAT HEARING

COMES NOW Simon J. Pinhas, M.D., Respondent, by his attorneys of record, Lawrence Silver A Law Corporation, and hereby requests that the Judicial Review Committee permit him to be represented by counsel at the hearing to the extent of permitting his attorney the opportunity to sit in the hearing and advise Respondent during the course of proceedings without actually participating in the hearing itself.

Respondent and his counsel in support thereof allege the following facts to be true:

1. By letter dated April 30, 1987, in accordance with the Midway Medical Staff Bylaws, Respondent requested a hearing by the Judicial Review Committee. In that same letter, Respondent requested the right to be represented by a physician who is also an attorney at that hearing.

2. By letter dated May 7, 1987, Respondent was served with a Notice of Hearing in this matter and was advised that his request for representation by counsel had been denied.

3. The right to retained counsel is a crucial part to due process and fair procedure as provided to Respondent by

the Federal and California Constitutions and fair procedure.

4. Failure to allow Respondent to be represented by counsel will seriously prejudice his representation and presentation of his case and will be in violation of the California and Federal Constitutions and fair procedure.

WHEREFORE, it is requested that the Judicial Review Committee permit counsel for Dr. Pinhas to sit in on the hearing and advise Respondent during the course of the proceeding without actual participation in the hearing itself.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S REQUEST FOR AN ORDER THAT IN THE EVENT THAT RESPONDENT IS DENIED HIS REQUEST TO BE REPRESENTED BY EITHER A PHYSICIAN-ATTORNEY OR AN ATTORNEY AT ALL STAGES OF THE PROCEEDINGS HEREIN THAT HE ALTERNATIVELY BE ALLOWED REPRESENTATION BY AN ATTORNEY TO APPEAR IN THE HEARINGS TO MAKE LEGAL ARGUMENT, INTRODUCE EVIDENCE, AND CROSS-EXAMINE WITNESSES.

COMES NOW Simon J. Pinhas, M.D., Respondent, by his attorneys of record, Lawrence Silver A Law Corporation, and hereby requests that the Judicial Review Committee permit him to be represented by counsel to the extent of appearing in the hearings to make all legal arguments to protect the record, and to produce evidence, and to cross-examine witnesses.

Respondent and his counsel in support thereof allege the following facts to be true:

1. By letter dated April 30, 1987, in accordance with the Midway Medical Staff Bylaws, Respondent requested a hearing by the Judicial Review Committee. In that same letter, Respondent requested the right to be represented by a physician who is also an attorney at that hearing.

2. By letter dated May 7, 1987, Respondent was served with a Notice of Hearing in this matter and was advised that his request for representation by counsel had been denied.

3. The right to retained counsel is a crucial part to due process and fair procedure as provided to Respondent by the Federal and California Constitutions.

4. Failure to allow Respondent to be represented by counsel to the extent requested above will seriously prejudice his representation and presentation of his case and will be in violation of the California and Federal Constitutions.

WHEREFORE, it is requested that the Judicial Review Committee permit counsel for Respondent to participate in the hearings to the extent of making all legal arguments to protect his record, introduce evidence, and to cross-examine witnesses.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S MOTION FOR AN ORDER PERMITTING HIM TO BE REPRESENTED BY A PHYSICIAN WHO IS ALSO AN ATTORNEY AT ALL STAGES OF THE PROCEEDINGS HEREIN

COMES NOW Simon J. Pinhas, M.D., Respondent, by his attorneys of record Lawrence Silver A Law Corporation, and hereby requests the Judicial Review Committee enter an order permitting him to be represented by a physician who is also an attorney at all stages of the proceedings herein.

Respondent and his counsel in support thereof allege the following facts to be true:

1. By letter dated April 30, 1987, in accordance with the Midway Medical Staff Bylaws, Dr. Pinhas requested a hearing by the Judicial Review Committee. In that same letter, Dr. Pinhas requested the right to be represented by a physician who is also an attorney at that hearing.

2. By letter dated May 7, 1987, Dr. Pinhas was served with a Notice of Hearing in this matter and was advised that his request for representation by counsel had been denied.

3. The right of an affected practitioner-respondent to be entitled to be accompanied by and/or represented at the Judicial Review Committee hearing by a member of the Medical Staff in good standing is provided by the Midway Hospital Medical Staff Bylaws Article VIII, Section 2b. However, the terms of those Bylaws negate that right if the member of the Medical Staff chosen is also an attorney.

4. The necessity of a practitioner-respondent to these proceedings to be represented by a physician-advocate is obvious given the technical medical substance of the proceedings, charts, charges, and evidence. But, equally obvious, must be the necessity of representation by counsel because a hearing of this nature of necessity involves a myriad of legal issues, with respect to which respondent-practitioner has no expertise.

5. The right of retained counsel is an essential part of fair procedure and due process as provided to Respondent by the California and Federal Constitutions.

6. The provision in Article VIII, Section 2b of the Midway Medical Center Medical Staff Bylaws with respect to the exclusion of a physician advocate who is also an attorney is unconstitutional and irrational, should be declared a nullity, and be stricken as a regulation of proceedings of this nature.

7. Failure to allow Respondent to be represented by counsel will seriously prejudice his representation and presentation of his case and will be in violation of the California and Federal Constitutions and fair procedure.

WHEREFORE, it is requested that the Judicial Review Committee enter an order permitting Dr. Pinhas the right to be represented by a physician who is an attorney at the hearing and ordering that this physician-attorney be present and argue motions on Respondent's behalf, examine and cross-examine witnesses, may be allowed to introduce evidence, and fully and completely participate in the hearing and protect the record at all stages of the proceedings herein.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S MOTION REQUESTING THE JUDICIAL REVIEW COMMITTEE TO ARTICULATE THE FACTS AND CIRCUMSTANCES SURROUNDING THEIR DECISION NOT TO EXERCISE THEIR DISCRETION TO PERMIT RESPONDENT TO BE REPRESENTED BY COUNSEL AT THE HEARING HEREIN

COMES NOW Simon J. Pinhas, M.D., Respondent, and hereby moves the Judicial Review Committee to state the facts and circumstances surrounding their decision not to exercise their discretion to permit respondent to be represented by counsel herein, specifically to provide Respondent in writing:

1. The identity, by name, association and position, of the individual or entity who presented the issue of counsel to each member of the Judicial Review Committee;

2. The identity of the individuals that the Judicial Review Committee spoke to in connection with the decision to deny representation by counsel;

3. The reason the Judicial Review Committee denied Respondent representation by counsel;

4. A statement with respect to whether or not a Judicial Review Committee of Midway Hospital Medical Center has ever exercised their discretion to permit representation by counsel of any respondent in a Judicial Review Committee hearing, together with the reasons therefore.

Respondent and his counsel in support thereof allege the following facts to be true:

1. By letter dated April 30, 1987, in accordance with the Midway Medical Staff Bylaws, Dr. Pinhas requested a

hearing by the Judicial Review Committee. Dr. Pinhas by the same letter requested the right to be represented by counsel at all stages of the proceeding. (A copy of the April 30 letter is attached hereto as Exhibit "1".)

2. By letter dated May 7, 1987, a copy of the Notice of Hearing in this matter was delivered to Dr. Pinhas, and *inter alia,* Dr. Pinhas was advised that: "The Judicial Review Committee has been polled with regard to your request for representation by counsel, pursuant to Article VIII, Section 2.b. You are hereby advised that the Committee has unanimously voted not to permit either you or the Medical Staff to be represented by an attorney at law at the hearing." (A copy of the May 7 letter is annexed hereto as Exhibit "2".)

3. The doctrines of fair procedure and due process guaranteed to Respondent by the California and United States Constitutions embody the inherent rights of representation by counsel.

4. The legal issues that are of necessity involved in a hearing of this nature are manifest. Respondent lacks the expertise that representation by counsel would provide.

5. Failure to allow Dr. Pinhas to be represented by counsel will seriously prejudice his representation or presentation of his case and will be in violation of the California and Federal Constitutions.

WHEREFORE, it is requested that the Judicial Review Committee set forth in writing its responses to the four requests made by Respondent above.

DATED: May 14, 1987

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RESPONDENT'S MOTION TO HEAR AND DECIDE ALL OF RESPONDENT'S PRE-HEARING MOTIONS AT A REASONABLE TIME PRIOR TO THE COMMENCEMENT OF THE HEARING HEREIN

COMES NOW Simon J. Phinas, M.D., Respondent and hereby moves the Judicial Review Committee to hear and decide all of Respondent's pre-trial motions at a reasonable time prior to the commencement of the taking of evidence — at least one week in advance of the hearing herein.

Respondent and his counsel in support thereof allege the following facts to be true:

1. Motions *in limine* or pre-trial motions are designed to establish the procedures to be followed, and narrow and define the issues substantively to be tried, at the hearing.

2. Rulings made on these matters will affect positions to be taken, at the hearing, and will instruct and guide the preparations necessary for the presentation of evidence.

3. Therefore, as both a logical and practical matter, pre-trial motions should be heard and decided sufficiently in advance of the taking of evidence at the hearing herein.

4. The guarantees of fair procedure and the due process under the California and United States Constitutions mandate adherence to such a sequence of determination respecting pre-trial matters.

WHEREFORE, Respondent requests the Judicial Review Committee to enter a determination that it will hear and determine all of Respondent's pre-trial motions at a reasonable time prior to the commencement of the hearing herein.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S MOTION FOR AN ORDER DIRECTING THAT ALL WITNESSES WHO ARE INTENDED TO BE CALLED AT THE HEARING BE INSTRUCTED NOT TO DISCUSS THE MATTER WITH ANY MEMBERS OF THE HEARING PANEL OR THE HEARING OFFICER

COMES NOW Simon J. Pinhas, M.D., Respondent and hereby moves the Judicial Review Committee to order that all witnesses who are intended to be called at the hearing be instructed not to discuss the matter with any member of the hearing panel or the Hearing Officer. Respondent and his counsel in support thereof allege the following facts to be true:

1. Due process and fair procedure afforded to respondent by the United States and California Constitutions demand the opportunity for a fair hearing consisting of unbiased, unprejudiced testimony.

2. To preserve both propriety and the appearance of propriety, the record in this matter should be complete and not subject to question or surmise as to the impact any off the record discussions between officials and witnesses may have had.

WHEREFORE, Respondent requests that the Judicial Review Committee enter an order that all witnesses who are intended to be called at the hearing be instructed not to discuss the matter with any members of the hearing panel.

DATED: May 14, 1987

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RESPONDENT'S MOTION REQUESTING THAT ALL REPORTS OF EXPERT WITNESSES TO BE CALLED BY THE HOSPITAL BE SUBMITTED TO RESPONDENT NO LESS THAN 10 DAYS PRIOR TO THEIR BEING CALLED AS WITNESSES

COMES NOW Simon J. Pinhas, M.D., Respondent and hereby moves the Judicial Review Committee to enter an order that all reports of expert witnesses to be called by the Hospital be submitted to him no less than ten (10) days prior to the date they are to be called as witnesses and ordering that the Hospital be precluded from calling any expert witness if such report is not made available.

Respondent and his counsel in support thereof allege the following facts to be true:

1. Expert testimony, as a general rule, is opinion testimony with respect to subject matter that is beyond the ken of the average trier of fact. Despite the expert's lack of the first-hand knowledge of a percipient witness to the event in question, the normal antecedent requirement for the admission of testimony, expert opinion testimony is deemed admissible because it is viewed as useful and beneficial to the trier of fact.

2. Expert testimony, thus, is innately more complex and demanding than ordinary evidence.

3. It is therefore axiomatic that more time is needed to ascertain, analyze and understand the substance and significance of such testimony in order that a party can adequately prepare to address such testimony.

4. Respondent is entitled to the adoption of this procedure by the Judicial Review Committee in order to effec-

tuate his right to fair procedure and due process under the California and United States Constitution.

WHEREFORE, Respondent requests that the Judicial Review Committee enter an order directing that all reports of expert witnesses to be called by the Hospital be submitted to Respondent no less than 10 days prior to their being called as witnesses and that the Hospital be precluded from calling any expert witness if such report is not made available.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S MOTION REQUESTING A LIST OF ALL WITNESSES TO ANY OF THE EVENTS INVOLVING CHARGES HEREIN: A LIST OF ALL WITNESSES MIDWAY HOSPITAL INTENDS TO CALL HEREIN; A WRITTEN SUMMARY OF THE DIRECT TESTIMONY OF ALL WITNESSES TO BE CALLED; AND THE OPPORTUNITY TO INTERVIEW ALL WITNESSES WHO MAY BE CALLED AGAINST RESPONDENT

COMES NOW Simon J. Pinhas, M.D., Respondent, and hereby moves the Judicial Review Committee to enter an order requiring Midway Hospital Medical Center ("Midway") to provide:

1. A list of all witnesses to any of the events involving the charges, whether or not they are intended to be called at the time of the hearing herein;

2. A list of all witnesses that the Hospital intends to ca'l at the time of the hearing;

3. A written summary of the direct testimony of all witnesses who will be called in the proceedings against Respondent;

And also ordering the Respondent be allowed the opportunity to interview all witnesses that may be called as witnesses against him herein.

Respondent and his counsel in suppport thereof allege the following facts to be true:

1. The hearing in this matter should be devoted exclusively to evidence which is material, relevant and competent.

2. The preparation by the parties herein should therefore be directed at securing and focusing on, only those witnesses and that testimony which will comport with such well-established evidentiary standards.

3. Determining in advance which witnesses will and should be called, and the nature and substance of their testimony, will narrow and delimit the preparation for, and the direct and cross-examination of, those witnesses.

4. This process of discovery will shorten the time in which witnesses need to appear on direct examination and ultimately serve the interest of economy of time and effort to be expended by all parties and officials at the hearing.

WHEREFORE, Respondent requests that the Judicial Review Committee enter an order requiring that:

1. Midway Hospital produce a list of all witnesses to any of the events involving the charges whether or not they are intended to be called at the time of the hearing;

2. Produce a list of all witnesses who Midway intends to call at the time of the hearing;

3. A written summary of the direct testimony of all witnesses who will be called in the proceedings against Respondent;

4. And further ordering that Respondent be granted the opportunity to interview all witnesses who may be called as witnesses against him in the proceedings herein.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

MOTION REQUESTING THAT ALL ADVICE AND INSTRUCTIONS GIVEN BY THE HEARING OFFICER TO THE COMMITTEE ON ANY ISSUE WITH RESPECT TO OR AT THE HEARING BE RECORDED; AND REQUESTING THAT THE HEARING OFFICER BE EXCLUDED FROM DELIBERATIONS AT THE CLOSE OF EVIDENCE

COMES NOW Respondent Simon J. Pinhas, M.D., by his attorneys and hereby requests that the Hearing Officer be excused from the deliberations of the Hearing Committee or, in the alternative, that the advice and instructions given by the Hearing Officer be recorded and in support thereof alleges:

1. The Committee will commence its deliberations upon the close of the evidence.

2. The Hearing Officer was appointed to allow the orderly presentation of evidence and to provide other legal advice, and any advice or instructions given by the Hearing Officer should be duly recorded.

3. The Midway Medical Staff Bylaws provide that the Hearing Officer is not allowed or permitted to cast a vote during the Committee's deliberations.

4. The Hearing Officer has no real role or function to perform during Committee deliberations. The roles of judge, (Hearing Officer), and jury (the Committee) should be carefully preserved and meticulously respected to foster the attitude and atmosphere of impartiality that must be accorded to respondent under the principles of due process and fair procedure which are guaranteed by the United States and California Constitution.

5. Respondent requests that to serve these interests the Hearing Officer should be excluded from Committee deliberations.

6. In the event that the Hearing Officer's not excluded from Committee deliberations, any advice or instructions he may give to the committee during those deliberations should be duly recorded.

WHEREFORE, it is respectfully requested that the Judicial Review Committee order that any participation by the Hearing Officer on any issue with respect to or at the Hearing be recorded by the court reporter, and further order that the Hearing Officer be excluded from the deliberations of the Committee at the close of evidence herein; or alternately ordering that any advice or instructions given by the Hearing Officer during Committee deliberations to be duly recorded.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S REQUEST FOR PERMISSION TO APPEAR WITH COUNSEL

COMES NOW Simon J. Pinhas, M.D., respondent, by his attorneys of record, Lawrence Silver A Law Corporation, and hereby requests that the Judicial Review Committee permit him to be represented by counsel in connection with all pre-hearing proceedings in this matter and at the Judicial Review Committee Hearing commencing on May 26, 1987. Respondent and his counsel in support thereof allege the following facts to be true:

1. By letter dated May 7, 1987, Midway Hospital Medical Center ("Midway") advised Respondent that his request for representation by counsel had been denied in connection with the hearing with respect to respondent's summary suspension of all medical staff, including admitting and surgical, privileges.

2. Article VIII, Section 2 (b) of the Midway Medical Staff Bylaws provides for representation by counsel at the Judicial Review Committee Hearing only if the Judicial Review Committee, in its discretion, permits both sides to be represented. Respondent does not object to the Hospital being represented at the hearing.

3. To the extent that the Judicial Review Committee has discretion to appoint counsel, respondent requests that the Judicial Review Committee exercise it.

4. Respondent requests representation of counsel at all stages of this hearing, including the pre-hearing stage where all motions will be argued. Since Article VIII, Sections 2(g) and (i) provide the right to submit written argument, argument of counsel should be permitted to be heard in support of these briefs.

5. Respondent requests representation by counsel because of the many legal issues that are of necessity involved in the hearing of this nature. Respondent has no training, understanding, or ability with respect to: (a) reading and interpreting the Bylaws'; (b) selection of members of the Committee; (c) challenging a member of the Committee for bias or prejudice; (d) challenging the hearing officer for bias or prejudice; (e) interpreting the burden of proof; (f) evaluating the admissibility of evidence; (g) objecting to testimony that is offered; (h) preserving the record; (i) making legal arguments; (j) and marshalling arguments in a persuasive way.

6. In addition, cross-examination of witnesses requires great legal skill and courtroom experience. It is anticipated that it will be necessary to cross-examine witnesses to show bias, motive, bad acts, and inconsistent statements. Respondent does not possess the legal skills necessary to accomplish this task.

7. The right to retained counsel is an essential part of fair procedure and due process as provided to Respondent by the California and Federal Constitutions.

8. Failure to allow Respondent to be represented by counsel will seriously prejudice his representation and presentation of this case and will be in violation of the California and Federal Constitutions and fair procedure.

WHEREFORE, it is requested that the Judicial Review Committee permit counsel for Dr. Pinhas to participate on respondent's behalf at all stages of the hearing.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

MOTION FOR FULL DISCLOSURE OF ALL CHARGES AGAINST RESPONDENT WITH SUFFICIENT PARTICULARITY TO PERMIT THE PREPARATION OF AN ADEQUATE DEFENSE HEREIN

COMES NOW Respondent Simon J. Pinhas, M.D., seeking full disclosure of all charges against him with sufficient particularity that he may investigate and rebut those charges. Respondent and his counsel in support thereof allege the following facts to be true:

1. On May 7, 1987, Midway Hospital Medical Center ("Midway") gave notice of the hearing herein and purported to afford Respondent notice of the charges against him. (A copy of the Notice of Hearing ["the Notice"] is annexed hereto as Exhibit "1".)

2. The Notice sets forth what it terms "specific charges", but the charges are rendered in broad, general language, and reference nearly 128 charts which are cited as support for those charges. The charges and charts, even when studied together, do not offer sufficient detail with which Respondent can adequately prepare a defense.

3. In order to investigate and rebut Midway's charges, Respondent must be able to determine in what particular respect each of the charts allegedly support the charges as proffered by Midway. General allegations, followed by a collocation of chart numbers, do not satisfy this requirement.

4. Moreover, Midway's Notice identifies at least five (5) witnesses, but does not state which charges and/or charts will be addressed by the testimony of each of those witnesses.

5. Respondent is thus left without sufficient disclosure to determine intelligently and efficiently what any one witness in fact actually knows about a particular charge or a particular chart.

6. As a result, Respondent's ability to prepare for examination of these witnesses is significantly impaired.

7. The dictates of fair procedure and due process quaranteed to Respondent under the California and United States Constitution mandate more complete disclosure with greater particularity than that accorded to Respondent herein.

WHEREFORE, Respondent requests that the Judicial Review Committee enter an order requiring Midway Hospital Medical Center to provide full disclosure of all charges against Respondent with sufficient particularity to permit the preparation of an adequate defense herein.

DATED: May 14, 1987

[SIGNATURE
DELETED]

[MIDWAY HOSPITAL MEDICAL CENTER LETTERHEAD DELETED]

May 7, 1987

Simon Pinhas, MD
9033 Wilshire Blvd. #206
Beverly Hills, CA 90211

BY: CERTIFIED MAIL
HAND
DELIVERED:
(5/7/87)

Dear Dr. Pinhas:

This letter is in response to your request for a hearing at Midway Hospital Medical Center related to your summary suspension and the recommendation to terminate your medical staff membership. Pursuant to Article VIII, Section I.c., this hearing will be held at 6:30 p.m. on May 12, 1987 in the Pavilion Conference Room.

A Judicial Review Committee has been appointed by the Chief of Staff. Its Chairman is Ellis Berkowitz, MD, and its members are: John Hofbauer, MD; Jay Jordan, MD: Debra Judelson, MD; Alan Kessler, MD; Dwight Makoff, MD and Stephen Seiff, MD. These committee members have been advised not to discuss this matter with you or any other member of the Hospital's Medical Staff.

The decisions to summarily suspend and to terminate your membership at Midway Hospital Medical Center were based on reviews of your patient records involving ophthalmological surgeries conducted at this Hospital in

1987. These reviews concluded that your conduct of patient care was below the acceptable standard of care in this Hospital.

The specific charges that support this conclusion, and the specific charts that support these charges are as follows:

1. JUDGMENT TO PROCEED WITH SURGERY NOT WITHIN STANDARD OF CARE IN HOSPITAL.

A. No History and Physical on patient chart prior to surgery:

Chart #7071027	Chart #7066244
Chart #7070713	Chart #7063199
Chart #7070489	Chart #7059728
Chart #7070403	
Chart #7070179	Chart #7029896/
Chart #7067615	2885069

B. Incomplete Pre-Operative workup:

Chart #7087136	Chart #7075332
Chart #7084633	Chart #7073054
Chart #7084609	Chart #7072376
Chart #7084595	Chart #7070543
Chart #7083955	Chart #7070004
Chart #7082142	Chart #7069979
Chart #7081316	Chart #7068204
Chart #7079249	Chart #7067836
Chart #7078307	Chart #7066244
Chart #7078293	Chart #7065167
Chart #7078285	Chart #7065094
Chart #7078145	Chart #7063059
Chart #7078072	Chart #7062664
Chart #7075979	Chart #7059639

Chart #7075936	Chart #7059612
Chart #7075928	Chart #7057172
Chart #7075375	Chart #7051832

C. Surgery contraindicated by patients' medical condition:

Chart #7087365	Chart #7070446
Chart #7087136	Chart #7068204
Chart #7084663	Chart #7065183/
Chart #7084609	2909006
Chart #7083998	Chart #7065094
Chart #7082142	Chart #7065035
Chart #7081316	Chart #7062664
Chart #7079249	Chart #7062664
Chart #7078102	Chart #7059639
Chart #7075936	Chart #7059612
Chart #7075529	Chart #7056915
Chart #7072392	Chart #7054459
Chart #7072376	Chart #7029896/
	2885069

2. FAILURE TO OBTAIN REQUIRED CONSENT FOR PROCEDURE PERFORMED.

A. Lack of appropriate consent for procedure performed:

Chart #7068204	Chart #7065086/
Chart #7067674	2908727
Chart #7066244	Chart #7063318

B. Lack of informed consent for surgery:

Chart #7085788	Chart #7078129
Chart #7084099	Chart #7075456
Chart #7081936	Chart #7072422
Chart #7081928	Chart #7068182
Chart #7079397	Chart #7068107
Chart #7079389	Chart #7065019
Chart #7078293	Chart #7062699
	Chart #7057172

C. No IntraOcular Lens Consent:

Chart #7084692	Chart #7063086/
Chart #7084684	08727
Chart #7083947	Chart #7063318
Chart #7082142	Chart #7062699
Chart #7079273	Chart #7062672
Chart #7072724	Chart #7062605
Chart #7070713	Chart #7062532
Chart #7070535	Chart #7059639
Chart #7067585	Chart #7057687
Chart #7066244	Chart #7057563
Chart #7065153	Chart #7057172
Chart #7065132	Chart #7029896/
	2885069

3. NO ASSISTANT AT SURGERY AS REQUIRED BY MEDICAL STAFF BYLAWS:

Chart #7057644	Chart #7057563
Chart #7057636	Chart #7057555
Chart #7057628	Chart #7057547

The Judicial Review Committee has been polled with regard to your requests for representation by counsel, pursuant to Article VIII., Section 2.b. You are hereby advised that the Committee has unanimously voted not to permit either you or the Medical Staff to be represented

by an attorney at law at the hearing. You are entitled, as that section indicates, to be represented by a member of the Medical Staff in good standing. If you will be represented by a staff member, please inform the undersigned of the identity of that person so that further communication regarding this matter can also be directed to that person.

A Hearing Officer, Richard Posell, Esq., has been appointed by the Governing Board. Mr. Posell is a partner in the law firm of Shapiro, Posell & Close and is experienced at conducting hearings of this type at hospitals. A certified shorthand reporter has also been ordered to maintain a record of the hearing.

If you wish to review the charts in question prior to the hearing, please contact Peggy Farber RN, Director of Quality Assurance at 932-5231 or 932-5022 to make these arrangements. If copies of these records are requested, arrangements can be made with Ms. Farber after you have completed the appropriate Non-Disclosure Agreement. Copies will be handled at your own expense.

The hearing will be conducted pursuant to the provisions of Article VIII of the Midway Hospital Medical Center Medical Staff Bylaws. Those Bylaws do not provide for pre-hearing discovery of any documents or information related to the proceedings. Additionally, the Hospital does not have subpoena power or other powers to compel any one to testify at a medical staff hearing.

While the Medical Staff is not required under the Bylaws to provide you with a list of witnesses it intends to call at the hearing, the following is a list of those persons who are currently expected to testify on behalf of the Medical Staff at the hearing: Alan Friedman, MD; Arthur Lurvey, MD; Jonathan Macy, MD; James Salz, MD and Maurice Schmir, MD. The Medical Staff reserves

the right to add to this list, or delete from it at any time. Please provide the undersigned with a list of your witnesses as soon as possible.

Very truly yours,

Mitchell Feldman
Regional Vice-President

cc: Lawrence Silver, Esq.

[CAPTION DELETED]

RESPONDENT'S MOTION TO EXCLUDE FROM TESTIMONY ANY WITNESS WHO WILL NOT SUBMIT TO AN INTERVIEW BY RESPONDENT AND HIS COUNSEL

COMES NOW, Simon J. Pinhas, M.D., Respondent, and hereby moves the Judicial Review Committee to exclude from testimony any witness who will not submit to an interview by Respondent and his counsel, and in support thereof alleges the following facts to be true:

1. On May 7, 1987, Respondent received a letter from Midway Hospital and Medical Center ("Midway"). It was stated that at least 5 witnesses would be called to testify on behalf of the Medical Staff at the hearings now scheduled for May 26, 1987.

2. Respondent believes and alleges that all 5 witnesses are either employed by Midway or are holders of staff privileges accorded by Midway.

3. In order to prepare for the hearing in which Midway seeks to terminate his staff privileges, it is necessary for Respondent to know what these witnesses will say about his conduct.

4. Respondent has never had the opportunity to interview these 5 witnesses.

5. None of these witnesses have ever previously testified against Respondent. Because Respondent was not represented by counsel he was unable to adequately cross-examine even these witnesses.

6. Midway can compel these witnesses to be interviewed by Respondent and his counsel pursuant to the Bylaws which require every member of the Medical Staff

to insure fair procedure to all other members. Fairness would dictate that witnesses so closely connected to one party not be permitted to testify unless Respondent has an opportunity to interview each of them.

7. The right to a fair hearing involves the right to confront and cross-examine opposing witnesses. A necessary corollary of this basic right is the right to interview witnesses to learn what they will say.

8. The California Constitution as well as the U.S. Constitution and the Midway Medical Staff bylaws guarantee Respondent a fair hearing.

WHEREFORE it is requested that the Judicial Review Committee issue an order that no witness be permitted to testify on behalf of the Medical Staff at the Judicial Review Committee hearing unless they submit to an interview by Respondent and his counsel.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S MOTION REQUESTING DOCUMENTS FOR THE PURPOSES OF EXAMINATION, REVIEW, AND DUPLICATION

COMES NOW Simon J. Pinhas, M.D., Respondent and hereby moves for the Judicial Review Committee to order the production to Respondent for purposes of examination and duplication at a time reasonably prior to the hearing in this matter of the following documents:

1. The originals of all charts in their full, complete, and unaltered state, which have been used or considered in connection with the bringing of charges against Respondent;

2. The Minutes of any meeting of any members of the staff of Midway Hospital Medical Center ("Midway") or its Medical Staff in connection with considering to bring and the bringing of any charges against Respondent;

3. All writings, as the term is defined by Section 250 of the California Evidence Code, and all copies which in any way are different therefrom, regarding any communication respecting Respondent's medical staff privileges or his performance as a physician at Midway;

4. All writings which are exculpatory to any charges or any sanction which might be sought to be imposed;

5. All communications with the Department of Health Services or any governmental agency regarding Respondent's practice of medicine; and all contracts between Midway or Summit Health, Ltd., or any affiliates, parents, or subsidiaries thereof, with any member of the Medical Staff for purposes of determining bias, interest, or for purposes of impeachment or any other appropriate evidentiary purpose.

WHEREFORE, it is requested that the Judicial Review Committee issue an order directing the production for purposes of Respondent's examination and duplication, at a reasonable time before the hearing herein, of the documents listed as items 1 through 5, inclusive above.

DATED: May 14, 1987

[SIGNATURE DELETED]

[CAPTION DELETED]

RESPONDENT'S MOTION REQUESTING AN ORDER COMPELLING THE HEARING OFFICER ATTORNEY POSELL TO ANSWER RESPONDENT'S REQUESTS FOR INFORMATION, OR, ALTERNATIVELY, DISQUALIFYING THE HEARING OFFICER AND APPOINTING A RETIRED JUDGE OF THE SUPREME COURT OR A HEARING OFFICER OF UNQUESTIONABLE IMPARTIALITY

COMES NOW Simon J. Pinhas, M.D., Respondent, and hereby moves for the Judicial Review Committee to rule and direct that the Hearing Officer in this matter, Richard E. Posell, a partner in the law firm of Shapiro, Posell & Close, respond in full to Respondent's requests for information, or be disqualified from presiding at the hearing herein. Respondent and his counsel in support thereof allege the following facts to be true:

1. On May 7, 1987, Respondent was informed by letter that Mr. Richard Posell, Esq., had been appointed by the governing board as hearing officer herein, Exhibit "A" attached hereto.

2. By letter dated May 8, 1987, which was hand-delivered to Mr. Posell at his offices at Shapiro, Posell & Close, Respondent, in order to determine whether to file a challenge to Mr. Posell's sitting as hearing officer, requested that Mr. Posell provide Respondent with certain information, Exhibit "B" attached hereto.

3. Respondent requested:

a. A full and complete recitation of any and all discussions Mr. Posell has had, or knowledge or information Mr. Posell has, with respect to this matter;

b. A full and complete recitation of any and all relationships and/or involvement Mr. Posell has had, prior to this matter, with Midway Hospital and/or Summit Health Ltd.;

c. A full and complete recitation of any and all other medical peer review hearings in which Mr. Posell has been involved;

d. A full and complete recitation of any and all business or matters referred to Mr. Posell by Weissburg & Aronson [Summit Health Ltd.'s counsel];

e. A full and complete recitation of any and all business or matters referred by Mr. Posell to Weissburg & Aronson;

f. A statement as to whether or not Mr. Posell was appointed as Hearing Officer in this matter by, at the behest or request of Weissburg & Aronson;

g. The amount of compensation Mr. Posell will receive in connection with his appointment and functions as Hearing Officer in this matter;

h. The identification of any hospitals, or other health care providers that Mr. Posell or his law firm represents; and

i. Any reason why Mr. Posell might not be able to fully protect Respondent's rights or be fair to Respondent in the hearing of this matter.

4. By letter, dated May 11, 1987, Mr. Posell stated that his appointment as hearing officer in this matter was made in accordance with the Bylaws of Midway Hospital, which provide in Article VIII, Section 2d, that a hearing officer may be an attorney at law. Mr. Posell stated that he was indeed an attorney at law licensed to practice in the State of California. Mr. Posell went on to say that

there was no reason why he could not be fair to all of the parties in this matter, and that he intends to be so. Finally, Mr. Posell concluded his letter by stating that it would be inappropriate for him to respond further to Respondent's May 8, 1987 letter, attached hereto as Exhibit "C".

5. The response provided by Mr. Posell is clearly inadequate.

6. The information requested by Respondent is essential in order for him to investigate Mr. Posell's impartiality and determine whether to file a challenge to the appointment of Mr. Posell as hearing officer in this matter.

7. Fair opportunity to be heard as guaranteed to Respondent by the Constitutions of California and the United States and fair procedure requires at the very minimum a neutral and detached hearing officer whose impartiality may not be questioned.

8. In the event the Judicial Review Committee decides not to enter an order compelling Mr. Posell to answer Respondent's requests for information, or does so enter the order requested and Mr. Posell refuses to respond or responds incompletely, Respondent asks the Judicial Review Committee to enter an order disqualifying Mr. Posell and appointing in his stead a retired Judge of the Superior Court or a hearing officer of similar unquestionable impartiality.

WHEREFORE, Respondent requests that the Judicial Review Committee enter an order compelling hearing officer, Richard E. Posell, to answer Respondent's request for information set forth above in paragraph 3, subparagraphs a through i, inclusive; or alternatively, enter an order disqualifying Mr. Posell and appointing a retired judge of the Superior Court or a hearing officer of similar unquestionable impartiality.

DATED: May 14, 1987

[SIGNATURE DELETED]

May 7, 1987

[MIDWAY HOSPITAL MEDICAL CENTER LETTERHEAD DELETED]

Simon Pinhas, MD
9033 Wilshire Blvd. # 206
Beverly Hills, CA 90211

BY: CERTIFIED MAIL
HAND DELIVERED:
(5/7/87)

Dear Doctor Pinhas:

This letter is in response to your request for a hearing at Midway Hospital Medical Center related to your summary suspension and the recommendation to terminate your medical staff membership. Pursuant to Article VIII, Section I.c., this hearing will be held at 6:30 p.m. on May 12, 1987 in the Pavilion Conference Room.

A Judicial Review Committee has been appointed by the Chief of Staff. Its Chairman is Ellis Berkowitz, MD, and its members are: John Hofbauer, MD; Jay Jordan, MD; Debra Judelson, MD; Alan Kessler, MD; Dwight Makoff, MD and Stephen Seiff, MD. These committee members have been advised not to discuss this matter with you or any other member of the Hospital's Medical Staff.

The decisions to summarily suspend and to terminate your membership at Midway Hospital Medical Center were based on reviews of your patient records involving ophthalmological surgeries conducted at this Hospital in 1987. These reviews concluded that your conduct of pa-

tient care was below the acceptable standard of care in this Hospital.

The specific charges that support this conclusion, and the specific charts that support these charges are as follows:

1. JUDGMENT TO PROCEED WITH SURGERY NOT WITHIN STANDARD OF CARE IN HOSPITAL.

A. No History and Physical on patient chart prior to surgery:

Chart #7071027	Chart #7066244
Chart #7070713	Chart #7063199
Chart #7070489	Chart #7059728
Chart #7070403	Chart #7059574
Chart #7070179	Chart #7029896/
Chart #7067615	2885069

B. Incomplete Pre-Operative workup:

Chart #7087136	Chart #7075332
Chart #7084633	Chart #7073054
Chart #7084609	Chart #7072376
Chart #7084595	Chart #7070543
Chart #7083955	Chart #7070004
Chart #7082142	Chart #7069979
Chart #7081316	Chart #7068204
Chart #7079249	Chart #7067836
Chart #7078307	Chart #7066244
Chart #7078293	Chart #7065167
Chart #7078285	Chart #7065094
Chart #7078145	Chart #7063059
Chart #7078072	Chart #7062664
Chart #7075979	Chart #7059639
Chart #7075936	Chart #7059612
Chart #7075928	Chart #7057172
Chart #7075375	Chart #7051832

C. Surgery contraindicated by patients' medical condition:

Chart #7087365
Chart #7087136
Chart #7084663
Chart #7084609
Chart #7083998
Chart #7082142
Chart #7081316
Chart #7079249
Chart #7078102
Chart #7075936
Chart #7075529
Chart #7072392
Chart #7072376
Chart #7070446
Chart #7068204
Chart #7065183/2909006
Chart #7065094
Chart #7065035
Chart #7062664
Chart #7062664
Chart #7059639
Chart #7059612
Chart #7056915
Chart #7054459
Chart #7029896/2885069

2. FAILURE TO OBTAIN REQUIRED CONSENT FOR PROCEDURE PERFORMED.

A. Lack of appropriate consent for procedure performed:

Chart #7068204
Chart #7067674
Chart #7066244
Chart #7065086/2908727
Chart #7063318

B. Lack of informed consent for surgery:

Chart #7085788
Chart #7084099
Chart #7081936
Chart #7081928
Chart #7079397
Chart #7079389
Chart #7078293
Chart #7078129
Chart #7075456
Chart #7072422
Chart #7068182
Chart #7068107
Chart #7065019
Chart #7062699
Chart #7057172

C. No IntraOcular Lens Consent:

Chart #7084692	Chart #7063086/
Chart #7084684	2908727
Chart #7083947	Chart #7063318
Chart #7082142	Chart #7062699
Chart #7079273	Chart #7062672
Chart #7072724	Chart #7062605
Chart #7070713	Chart #7062532
Chart #7070535	Chart #7059639
Chart #7067585	Chart #7057687
Chart #7066244	Chart #7057563
Chart #7065153	Chart #7057172
Chart #7065132	Chart #7029896/
	2885069

3. NO ASSISTANT AT SURGERY AS REQUIRED BY MEDICAL STAFF BYLAWS:

Chart #7057644	Chart #7057563
Chart #7057636	Chart #7057555
Chart #7057628	Chart #7057547

The Judicial Review Committee has been polled with regard to your requests for representation by counsel, pursuant to Article VIII., Section 2.b. You are hereby advised that the Committee has unamimously voted not to permit either you or the Medical Staff to be represented by an attorney at law at the hearing. You are entitled, as that section indicates, to be represented by a member of the Medical Staff in good standing. If you will be represented by a staff member, please inform the undersigned of the identity of that person so that further communication regarding this matter can also be directed to that person.

A Hearing Officer, Richard Posell, Esq., has been appointed by the Governing Board. Mr. Posell is a part-

ner in the law firm of Shapiro, Posell & Close and is experienced at conducting hearings of this type at hospitals. A certified shorthand reporter has also been ordered to maintain a record of the hearing.

If you wish to review the charts in question prior to the hearing, please contact Peggy Farber RN, Director of Quality Assurance at 932-5231 or 932-5022 to make these arrangements. If copies of these records are requested, arrangements can be made with Ms. Farber after you have completed the appropriate Non-Disclosure Agreement. Copies will be handled at your own expense.

The hearing will be conducted pursuant to the provisions of Article VIII of the Midway Hospital Medical Center Medical Staff Bylaws. Those Bylaws do not provide for pre-hearing discovery of any documents or information related to the proceedings. Additionally, the Hospital does not have subpoena power or other powers to compel any one to testify at a medical staff hearing.

While the Medical Staff is not required under the Bylaws to provide you with a list of witnesses it intends to call at the hearing, the following is a list of those persons who are currently expected to testify on behalf of the Medical Staff at the hearing: Alan Friedman, MD; Arthur Lurvey, MD; Jonathan Macy, MD; James Salz, MD and Maurice Schmir, MD. The Medical Staff reserves the right to add to this list, or delete from it at any time.

Please provide the undersigned with a list of your witnesses as soon as possible.

Very truly yours,

Mitchell Feldman
Regional Vice-President

cc: Lawrence Silver, Esq.

[LAWRENCE SILVER A LAW CORPORATION LETTERHEAD DELETED]

May 8, 1987

HAND DELIVERY

Richard Posell, Esq.
Shapiro, Posell & Close
2029 Century Park East
Suite 2600
Los Angeles, CA 90067

Re: Matter of Simon J. Pinhas, M.D.

Dear Mr. Posell:

We have been advised that you have been appointed by the Midway Hospital Governing Board to act as the Hearing officer in connection with the Judicial Review Committee hearing regarding the summary suspension and recommended termination of medical staff membership of Simon J. Pinhas, M.D.

In this respect, we request in order to determine whether to file a challenge to your sitting as hearing officer:

1. A full and complete recitation of any and all discussions you have had, or knowledge or information you have, with respect to this matter;

2. A full and complete recitation of any and all relationships and/or involvement you have had, prior to this matter, with Midway Hospital and/or Summit Health, Ltd.;

EXHIBIT "B"

3. A full and complete recitation of any and all other medical peer review hearings in which you have been involved;

4. A full and complete recitation of any and all business or matters referred to you by Weissburg & Aronson;

5. A full and complete recitation of any and all business or matters referred by you to Weissburg & Aronson;

6. A statement as to whether or not you were appointed as Hearing Officer in this matter by, at the behest or request of Weissburg & Aronson; and

7. The amount of compensation you will receive in connection with your appointment and functions as Hearing Officer in this matter.

8. The identification of any hospitals, or other health care providers that you or your firm represents.

9. Any reason why you might not be able to fully protect Dr. Pinhas' rights or be fair to him in the hearing of this case.

Please find enclosed a copy of Respondent's objections to Notice of Hearing dated May 7, 1987.

Sincerely,

Lawrence Silver

cc: Simon Pinhas, M. D.
with enclosure

LS: wbr

**[SHAPIRO, POSELL & CLOSE
LETTERHEAD DELETED]**

May 11, 1987

HAND DELIVERY

Lawrence Silver, Esq.
9100 Wilshire Boulevard
Suite 360
Beverly Hills, CA 90212

Re: Matter of Simon J. Pinhas, M.D.

Dear Mr. Silver:

I am in receipt of your letter of May 8, 1987, which was hand delivered to my office on the afternoon of May 8, 1987. As you know, my appointment as hearing officer in connection with the Judicial Review Committee hearing requested by Simon J. Pinhas, M.D. was made in accordance with the Bylaws of Midway Hospital. Those Bylaws provide, in Article VIII, Section 2d, that a hearing officer may be an attorney at law. There are no other requirements. I can assure you that I am an attorney at law licensed to practice in the state of California.

Furthermore, there is no reason why I cannot be fair to all of the parties in this matter, and I intend to be so. It would be inappropriate for me to respond further to your May 8, 1987 letter.

Very truly yours,

SHAPIRO, POSELL & CLOSE

RICHARD E. POSELL

REP/hh

cc: Midway Hospital Medical Staff Office

EXHIBIT "C"

[SHAPIRO, POSELL & CLOSE LETTERHEAD DELETED]

May 18, 1987

Lawrence Silver, Esq.
9100 Wilshire Boulevard
Suite 260
Beverly Hills, CA 90212

Re: Simon J. Pinhas, M.D.

Dear Mr. Silver:

On May 7, 1987 Dr. Pinhas was advised that the Judicial Review Committee had unanimously voted not to permit either Dr. Pinhas or the medical staff to be represented by an attorney at law at the hearing. Notwithstanding that determination, you have continued to barrage this office with motions and requests on behalf of your client.

Neither the hearing officer nor the Judicial Review Committee may consider motions or requests made "in any phase of the hearing or appeal procedure by an attorney at law unless the hearing committee, in its discretion, permits both sides to be represented by legal counsel" (Bylaw Article VIII, Section 2(b)). Your continued participation is a violation of the foregoing Bylaw. Please refrain from filing and serving further documents in this matter.

Very truly yours,

RICHARD E. POSELL

REP/hh

cc: Mark Kadzielski, Esq.
Midway Hospital Medical Staff

EXHIBIT K

[LAWRENCE SILVER A LAW CORPORATION LETTERHEAD DELETED]

May 19, 1987

VIA TELECOPIER AND MAIL

Richard Posell, Esq.
Shapiro, Posell & Close
2029 Century Park East
Suite 2600
Los Angeles, CA 90067

Re: Matter of Simon J. Pinhas, M.D.

Dear Mr. Posell:

In the years that I represented hospitals in medical staff matters and in the years that I have represented physicians regarding medical staff privileges, no one has ever suggested, much less ruled, that the attorney cannot advise and act on behalf of the physician except during the actual hearing itself. Your ruling is a first. This ruling further supports the reasons why I believe you should be disqualified from continuing as the hearing officer in this case. You are not impartial as you were and are required to be.

I request that you answer the following questions:

1. Did you and Mr. Kadzielski of Weissburg & Aronson, and/or counsel to Summit Corporation and Midway Hospital discuss my motions before you signed the letter dated May 18, 1987? If so, would you disclose the entire content of those conversion(s).

2. Are you striking all of the motions I made on Dr. Pinhas' behalf?

EXHIBIT "L"

3. Are you precluding me from further representing Dr. Pinhas in the proceedings at the Hospital?

Sincerely,

Lawrence Silver

cc: Mark Kadzielski
Simon J. Pinhas, M.D.

[SHAPIRO, POSELL & CLOSE LETTERHEAD DELETED]

May 21, 1987

Simon J. Pinhas, M.D.
9033 Wilshire Boulevard
Suite 206
Beverly Hills, CA 90211

Re: The matter of Simon J. Pinhas, M.D./Judicial Review Committee of Midway Hospital Medical Center

Dear Dr. Pinhas:

I am in receipt of 15 motions and requests made by you in connection with the above hearing now scheduled for May 26, 1987. Although these motions and requests are virtually identical to those which were served upon me on the letterhead of your attorney, and although it is clear from the bylaws that you may not be "represented in any phase of the hearing . . . procedure by an attorney at law unless the hearing committee in its discretion, permits" it (which it has not done), I have elected to rule on several of the motions and requests as follows:

1. Respondent's Request for Permission to Appear with Counsel.

The Judicial Review Committee has exercised its discretion not to permit either side to be represented by counsel. This motion is denied.

2. Respondent's Motion Requesting a List of All Witnesses to Any of the Events Involving Charges Herein: A List of All Witnesses Midway Hospital Intends to Call

Herein; A Written Summary of the Direct Testimony of All Witnesses to be Called; and the Opportunity to Interview All Witnesses Who May Be Called Against Respondent.

Both parties shall exchange a list of all witnesses which either intends to call at the time of the hearing, and a *brief* summary of the subject matter of their testimony by 4:00 p.m., Friday, May 22, 1987.

3. Respondent's Motion for an Order Directing that all Witnesses Who are Intended to be Called at the Hearing be Instructed not to Discuss the Matter with Any Members of the Hearing Panel or the Hearing Officer.

This motion is denied.

4. Respondent's Request for an Order that in the Event that Respondent is Denied the Right to Representation by Either a Physician-Attorney or an Attorney at All Stages of the Proceeding Herein that He Alternatively be Allowed Representation by an Attorney to Appear in the Hearings to Make Legal Argument, Introduce Evidence, and Cross-Examine Witnesses.

This motion is denied.

5. Respondent's Request that in the Event that He is Denied the Right to Representation by a Physician-Attorney at All Stages of the Proceedings or by Attorney Limited to Certain Functions in the Proceeding that Alternatively Responded by Granted the Opportunity to Have His Attorney Sit in the Hearing and Advise Him Without Actually Participating in that Hearing.

Since the presence of an attorney at the hearing to advise respondent would constitute "representation", this motion is denied.

6. Respondent's Motion for an Order Permitting Him to be Represented by a Physician Who is also an Attorney at all Stages of the Proceedings Herein.

The Bylaws at Article VIII, Section 2(b) provide: "The affected practitioner shall be entitled to be accompanied by and/or represented at the hearing by a member of the medical staff in good standing, except if the member of the medical staff is also an attorney." Based upon the foregoing Bylaw provision, this motion is denied.

7. Respondent's Motion Requesting that All Reports of Expert Witnesses to be Called by the Hospital be Submitted to Respondent No Less than 10 Days Prior to Their Being Called as Witnesses.

Since the service date of the above motion was May 20, 1987, the motion would be impossible to fulfill without a further continuance which has not been requested. The hearing officer's order with respect to the witness list exchange shall apply equally to expert as well as percipient witnesses.

A ruling on all other motions will be deferred to the time of the hearing. No further pre-hearing motions will be entertained. If you wish to bring any other matters to the attention of the hearing officer, I assure you that I will give them due consideration at the time of the hearing.

Very truly yours,

SHAPIRO, POSELL & CLOSE

RICHARD E. POSELL

REP/hh
cc: Midway Hospital Medical Center

[CAPTION DELETED]

DECLARATION OF MARINA NINO REGARDING CONVERSATION WITH PEGGY FARBER

I, Marina Nino, declare that:

1. I am an adult over the age of 21 and I make this declaration to record with Peggy Farber said to me and others on June 1, 1987.

2. On June 1, 1987, Peggy Farber of Midway Hospital's Risk Management Section approached a table in the cafeteria where Marina Nino, Barbara Aviles, Rose Pierce and Suprani Watana were sitting at approximately 6:30 p.m. while we were waiting to be called into the hearing regarding Dr. Pinhas' privileges. Ms. Farber said the following:

a. "I want to prepare you for what you are getting yourselves into."

b. "You don't have to do this."

c. "You can leave if you want to. You will not be persecuted or harassed if you leave."

d. "You are on your own, the hospital will not pay for your time."

e. "It is going to be like a court in there. There is a court stenographer. Everything you say will be taken down and under oath."

f. "You will each be called, one by one, you will not be allowed to go in as a group."

g. "You will be questioned in there by doctors, you will be cross-examined."

EXHIBIT "N"

3. Rose Pierce asked Ms. Farber to leave because she was scaring us.

4. Shortly thereafter Kay Deol came over to the table and she and Peggy Farber stayed around and hovered around the cafeteria for the rest of the evening.

5. At Los Angeles, California on June 9, 1987, I declare under penalty of perjury that the foregoing facts are true and correct and that I would competently testify thereto if called as a witness.

[SIGNATURE DELETED]

[CAPTION DELETED]

DECLARATION OF BARBARA AVILES REGARDING CONVERSATION WITH PEGGY FARBER

I, Barbara Aviles, declare that:

1. I am an adult over the age of 21 and I make this Declaration to record what Peggy Farber said to me and others on June 1, 1987.

2. On June 1, 1987, Peggy Farber of Midway Hospital's Risk Management Section approached a table in the cafeteria where Marina Nino, Barbara Aviles, Rose Pierce and Suprani Watana were sitting at approximately 6:30 p.m. while we were waiting to be called into the hearing regarding Dr. Pinhas' privileges. Ms. Farber said the following:

a. "I want to prepare you for what you are getting yourselves into."

b. "You don't have to do this."

c. "You can leave if you want to. You will not be persecuted or harassed if you leave."

d. "You are on your own, the hospital will not pay for your time."

e. "It is going to be like a court in there. There is a court stenographer. Everything you say will be taken down and under oath."

f. "You will each be called, one by one, you will not be allowed to go in as a group."

g. "You will be questioned in there by doctors, you will be cross-examined."

3. Rose Pierce asked Ms. Farber to leave because she was scaring us.

4. Shortly thereafter Kay Deol came over to the table and she and Peggy Farber stayed around and hovered around the cafeteria for the rest of the evening.

5. At Los Angeles, California on June 9, 1987, I declare under penalty of perjury that the foregoing facts are true and correct and that I would competently testify thereto if called as a witness.

[SIGNATURE DELETED]

**[SIMON J. PINHAS, M.D., INC.
LETTERHEAD DELETED]**

June 1, 1987

Mitchell Feldman
Regional Vice-President
5925 San Vicente Blvd.
Los Angeles, CA 90019

HAND DELIVERED

Dear Mr. Feldman,

Pursuant to the bylaws of the Medical Staff of Midway Hospital, I hereby request that you be present at the hearings regarding my medical staff privileges. I request that you be present on Tuesday June 2 at 6:30 P.M. in the Pavilion Conference room to present testimony. Your failure to appear will be prejudicial to me and in violation of the bylaws and fair procedure.

Sincerely,

Simon J. Pinhas, M.D.

EXHIBIT "O"

[SIMON J. PINHAS, M.D., INC. LETTERHEAD DELETED]

June 1, 1987

Arthur Lurvey, M.D.
Chief of Medical Staff
435 North Roxbury Drive
Beverly Hills, CA

HAND DELIVERED

Dear Doctor Lurvey,

Pursuant to the bylaws of the Medical Staff of Midway Hospital, I hereby request that you be present at the hearings regarding my medical staff privileges. I request that you be present on Tuesday June 2 at 6:30 P.M. in the Pavilion Conference room to present testimony. Your failure to appear will be prejudicial to me and in violation of the bylaws and fair procedure.

Sincerely,

Simon J. Pinhas, M.D.

[SIMON J. PINHAS, M.D., INC.
LETTERHEAD DELETED]

June 8, 1987

Mitchell Feldman
Regional Vice-President
5925 San Vicente Blvd.
Los Angeles, CA 90019

HAND DELIVERED

Dear Mr. Feldman,

On June 2nd Dr. Miller and I Searched for you at the Midway Hospital cafeteria and the Pavilion Conference Room and we were unable to find you. Since you did not comply with my request as explained in my letter dated June 1, 1987. I again ask, Pursuant to the bylaws of the medical staff of Midway Hospital, I hereby request that you be present at the hearings regarding my medical staff privileges. I request that you be present on Tuesday June 9, 1987 at 6:30 P.M. in the Pavilion Conference Room to present testimony. Your failure to appear will be prejudicial to me and in violation of the bylaws and fair procedure.

Sincerely,

Simon J. Pinhas, M.D.

cc: Richard Posell, Esq.
Gilbert Perlman, M.D.

[SIMON J. PINHAS, M.D., INC.
LETTERHEAD DELETED]

June 8, 1987

Arthur Lurvey, M.D.
Chief of Medical Staff
435 North Roxbury Drive
Beverly Hills, CA 90211

HAND DELIVERD

Dear Doctor Lurvey,

On June 2nd Dr. Miller and I searched for you at the Midway Hospital cafeteria and the Pavilion Conference Room and we were unable to find you. Since you did not comply with my request as explained in my letter dated June 1, 1987. I again ask, pursuant to the bylaws of the medical staff of Midway Hospital, I hereby request that you be present at the hearings regarding my medical staff privileges. I request that you be present on Tuesday June 9, 1987 at 6:30 P.M. in the Pavilion Conference Room to present testimony. Your failure to appear will be prejudicial to me and in violation of the bylaws and fair procedure.

Sincerely,

Simon J. Pinhas, M.D.

cc: Richard Posell, Esq.
Gilbert Perlman, M.D.

REPORT AND DECISION OF JUDICIAL REVIEW COMMITTEE IN THE MATTER OF SIMON J. PINHAS, M.D.

June 12, 1987

The Judicial Review Committee of Midway Hospital Medical Center convened on May 26, May 27, June 1, June 2, June 9, and June 12, 1987 to hear the appeal of Simon J. Pinhas, M.D. to his summary suspension issued by the Medical Executive Committee on April 13, 1987 and the Statement of Charges dated May 7, 1987.

Members of the Committee were Ellis Berkowitz, M.D., Chairman, John Hofbauer, M.D., Jay Jordan, M.D., Debra Judelson, M.D. Alan Kessler, M.D., Stephen Seiff, M.D. and Michael Weiss, M.D.

The hearing officer appointed by the hospital was Richard E. Posell, Esq.

Following the presentation of oral and documentary evidence and opening and closing statements, the Judicial Review Committee deliberated and made the following decision:

DECISION

Dr. Pinhas has not established by the preponderance of the evidence that the decision of the Medical Executive Committee to summarily suspend him was: (1) arbitrary or unreasonable; and (2) should not be sustained by the evidence. This decision is based on the following discussion of each charge.

1. CHARGE I.A.

DESCRIPTION

No history and physical examination on chart prior to surgery.

DISCUSSION

This charge was not sustained by the evidence. In all cases but one, there was ample evidence to show that a history and physical examination had been done prior to surgery even though the document did not appear on the chart when reviewed. One chart out of over 200 charts reviewed did not show willful disregard of hospital bylaws or policies, or substantial likelihood of immediate injury or damage to the health and safety of patients.

2. CHARGE I.E.

DESCRIPTION

This charge was not sustained by the evidence. The evidence demonstrated that Dr. Pinhas met the standard of care in his preoperative work-up as provided in the Rules and Regulations of the hospital regarding local anesthesia and regional block anesthesia in surgery. A chest x-ray or electrocardiogram is not required for surgery as he performed it. If in some cases the spirit of the rules was broken, the letter of the rules was not. Dr. Pinhas did not willfully disregard hospital bylaws or policies nor was there a substantial likelihood of immediate injury or damage to the health or safety of patients.

3. CHARGE I.C.

DESCRIPTION

Surgery contraindicated by medical condition.

DISCUSSION

This charge was sustained by the evidence. Chronically and acutely ill patients were brought to surgery with abnormal laboratory studies and clinical findings that should have resulted in cancellation of the surgery, but did not. By doing surgery under local and regional block anesthesia without the aid of an anesthesiologist, Dr. Pinhas assumed the full responsibility to proceed with the surgery but did not appropriately check the laboratory data before surgery and cancel those cases where indicated. There was created a situation in which the patients' health and welfare were in immediate danger.

4. CHARGE II.A.

DESCRIPTION

Lack of consent for procedure performed.

DISCUSSION

This charge was not sustained by the evidence. The consents for surgery were broad enough to cover the proposed procedure, and the operative reports reflected the appropriateness of the procedure performed.

5. CHARGE II.B.

DESCRIPTION

Lack of informed consent.

DISCUSSION

This charge was not sustained by the evidence. The evidence presented by Dr. Pinhas demonstrated that the patient or their conservators were able to sign an informed consent for surgery. No willful disregard of hospital bylaws or policies was shown nor was there a substantial likelihood of immediate injury or damage to the health or safety of patients.

6. CHARGE II.C.

DESCRIPTION

No intraocular lense (IOL) consent.

DISCUSSION

This charge was not sustained by the evidence. The evidence presented by Dr. Pinhas demonstrated that the IOL consents were obtained in the doctor's office and that a reasonable attempt was made to get them to the patient's chart in a timely manner. Again, Dr. Pinhas showed by a preponderance of the evidence that there was neither a willful disregard of hospital rules nor substantial likelihood of immediate injury or damage to the health or safety of patients.

7. CHARGE III.

DESCRIPTION

No assistant at surgery.

DISCUSSION

This charge was not sustained by the evidence. The evidence indicated that no assistant was present at surgery for a few cases on a single day under extenuating circumstances. Once Dr. Pinhas was told not to break this rule again, the episode was never repeated. There was no substantial likelihood of injury to patients nor did Dr. Pinhas' conduct rise to the level of willful disregard of hospital rules.

CONCLUSIONS

1. It was the opinion of the Judicial Review Committee that the summary suspension of Simon J. Pinhas, M.D. was reasonable and should be upheld because of the evidence brought in connection with Charge I.C.

2. The Committee further recommends the immediate reinstatement of Dr. Pinhas to the Medical Staff on the following special conditions to which Dr. Pinhas must agree:

(a) All pre-operative evaluations on Dr. Pinhas' surgical patients must be done prior to the patient's hospital admission and within seven (7) days of surgery, and medical problems identified in these evaluations shall be treated pre-operatively.

(b) Dr. Pinhas must have an anesthesiologist present in the operating room to monitor the patient and act as an additional physician to check and evaluate the medical condition and record of the patient.

(c) Dr. Pinhas' patients for ophthalmic surgery must have obtained a second opinion for this surgery preoperatively from a panel of staff opthalmologists approved by the Medical Executive Committee in rotational

sequence. The second opinion must support the indications for surgery.

(d) Dr. Pinhas must in all other respects conform to hospital bylaws, and rules and regulations.

3. If Dr. Pinhas agrees to the conditions for reinstatement of medical privileges, he will be on probation for six months from the date of agreement. The Medical Executive Committee shall appoint an *ad hoc* committee to review Dr. Pinhas' record at the end of or during the probationary period to see that these conditions are satisfactorily met. The *ad hoc* committee may recommend reinstatement of the suspension, removal of the conditions, continuation of the probationary period, or set new guidelines, as it wishes, and may set reasonable rules for its own operation.

4. Although not a condition of the agreement, the Judicial Review Committee suggests to Dr. Pinhas that he decrease his surgical volume so as not to tax the hospital facilities for handling a large number of outpatient cases on a single day. The surgeries are elective and can be spread out over a large time frame with equally good results.

Respectfully submitted,

ELLIS C. BERKOWITZ, M.D.
Chairman Judicial Review
Committee

[MIDWAY HOSPITAL MEDICAL CENTER LETTERHEAD DELETED]

July 6, 1987

Stephen Weitzman, MD
Chairman of Board of Directors
Midway Hospital Medical Center
8635 West Third Street #1170-W
Los Angeles, CA 90048

Re: Judicial Review Committee
in the matter of
Simon J. Pinhas, MD

Dear Doctor Weitzman:

The Medical Executive Committee reviewed the decision and recommendation of the Judicial Review Committee regarding Simon J. Pinhas, M.D. A copy of that decision is enclosed.

The Medical Executive Committee has unanimously voted to appeal the findings of the Judicial Review Committee regarding Charges 1.A., 1.B., 2.A., 2.B., 2.C. and 3 as well as the recommendation of the Judicial Review Committee that Dr. Pinhas be reinstated for a probationary period under certain terms and conditions. The grounds for this appeal are that the Medical Executive Committee believes that these findings and this recommendation are arbitrary and capricious. The Medical Executive Committee believes that the *decision* reached by the Judicial Review Committee that summary suspension of Dr. Pinhas was appropriate is correct, but further believes that this decision is supported by substantial evidence for each of the charges, and that the Medical

Executive Committee's initial recommendation of termination of medical staff membership is warranted in this case.

By copy of this letter for Dr. Pinhas I am notifying him of this appeal.

Very truly yours,

Arthur N. Lurvey, M.D.
Chief of Staff

Enc. (Decision)
cc. S. Pinhas, M.D.

[CAPTION DELETED]

NOTICE OF APPEAL PURSUANT TO BYLAWS

COMES NOW Simon J. Pinhas, M.D., in proper, and hereby states that the report and recommendations of the Judicial Review Committee, dated June 12, 1987, was received by Simon J. Pinhas, M.D., respondent, on June 29, 1987 and pursuant to Article VIII, Section 3 hereby gives notice that, without waiving any other right(s), respondent hereby appeals the decision of the Judicial Review Committee to the Governing Board.

The determinations by the Hearing Officer and the Judicial Review Committee were contrary to the rights secured by and granted to Simon J. Pinhas, M.D. by the Bylaws, the laws and Constitutions of the State of California and of the United States, were not supported by substantial evidence and were arbitrary and capricious.

DATED: July 7, 1987

[SIGNATURE DELETED]

EXHIBIT "R"

APPENDIX 3

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SIMON J. PINHAS, M.D.,
Plaintiff,

v.

SUMMIT HEALTH, LTD., a corporation;
MIDWAY HOSPITAL MEDICAL CENTER,
a California general hospital;
THE MEDICAL STAFF OF
MIDWAY HOSPITAL MEDICAL CENTER,
an unincorporated association;
MITCHELL FELDMAN; AUGUST READER;
ARTHUR N. LURVEY; RICHARD E. POSELL,
JONATHAN I. MACY; JAMES J. SALZ;
GILBERT PERLMAN; PEGGY FARBER;
MARK KADZIELSKI; WEISSBURG AND
ARONSON, INC; and STATE OF
CALIFORNIA BOARD OF MEDICAL
QUALITY ASSURANCE,
Defendants.

CASE No. 87 03292 FFF (GHKx)

NOTICE OF MOTIONS AND MOTIONS TO DISMISS COMPLAINT AND FOR SANCTIONS

[F.R.Civ.P. Rules 11, 12(b)(1), and 12(b)(6)]

Date: September 21, 1987
Time: 10:00 a.m.
Courtroom: 255

To Plaintiff, SIMON J. PINHAS, M.D., and to his attorney of record, Lawrence Silver, and co-counsel Maxwell Blecher:

PLEASE TAKE NOTICE that Defendants SUMMIT HEALTH, LTD., MIDWAY HOSPITAL MEDICAL CENTER, THE MEDICAL STAFF OF MIDWAY HOSPITAL MEDICAL CENTER, MITCHELL FELDMAN, AUGUST READER, AUTHUR N. LURVEY, RICHARD E. POSELL, JONATHAN I. MACY, JAMES J. SALZ, GILBERT PERLMAN, PEGGY FARBER, MARK KADZIELSKI and WEISSBURG AND ARONSON, INC., hereby move this Court for an order dismissing plaintiff's complaint for damages and injunctive relief pursuant to Federal Rule of Civil Procedure 12(b)(1), and 12(b)(6). Defendants also move this Court for sanctions pursuant to Federal Rule of Civil Procedure 11, against counsel for plaintiff. These motions have been set for hearing on September 21, 1987 at 10:00 o'clock a.m. in Courtroom 255 of the United States District Court located at 312 North Spring Street, Los Angeles, California.

Defendants bring these motions on the grounds that plaintiff failed to plead a federal question sufficient to invoke federal subject matter jurisdiction (F.R.Civ.P. 12(b)(1)); failed to state a claim upon which relief can be granted (F.R.Civ.P. 12(b)(6)); and plaintiff's counsel failed to conduct a reasonable inquiry both as to the relevant facts and law prior to bringing the instant action, and prior to amending the first complaint.

These motions will be based upon these moving papers, including the attached memorandum of points and authorities, the Court's file in this action, and upon such oral argument and documentary evidence as may be presented at the time of the hearing.

DATED: August 4, 1987

WEISSBURG AND ARONSON, INC.
ROBERT J. GERST
J. MARK WAXMAN
MARK A. KADZIELSKI

By: _____
Mark A Kadzielski
Attorneys for Defendants

APPENDIX 4

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SIMON J. PINHAS, M.D.,
Plaintiff,

vs.

SUMMIT HEALTH, LTD., a corporation; MIDWAY HOSPITAL MEDICAL CENTER, a California general hospital; THE MEDICAL STAFF OF MIDWAY HOSPITAL MEDICAL CENTER, an unincorporated association; MITCHELL FELDMAN; AUGUST READER; ARTHUR N. LURVEY, RICHARD E. POSELL; JONATHAN I. MACY; JAMES J. SALZ; GILBERT PERLMAN; PEGGY FARBER; MARK KADZIELSKI; WEISSBURG and ARONSON, INC.; and STATE OF CALIFORNIA BOARD OF MEDICAL QUALITY ASSURANCE,
Defendants.

Case No. 87 03292 FFF (GHKx)

ORDER DISMISSING ACTION

FILED: October 5, 1987

On September 21, 1987 the Motions of defendants Summit Health, Ltd., Midway Hospital Medical Center, The Medical Staff of Midway Hospital Medical Center, Mitchell Feldman, August Reader, Arthur N. Lurvey, Richard E. Posell, Jonathan I. Macy, James J. Salz, Gilbert Perlman, Peggy Farber, Mark Kadzielski and Weissburg and Aronson, Inc. to dismiss plaintiff's Complaint and this action made pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), together with defendants' Motions for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure came on for hearing

before Ferdinand F. Fernandez, United States District Judge, Judge Presiding. The moving parties were represented by J. Mark Waxman, Esq. of Weissburg and Aronson, Inc. Plaintiff was represented by Lawrence Silver, Esq. and Alicia G. Rosenberg, Esq.

The Court, having considered all of the pleading, files, memoranda and documents on file herein, determined to grant the Motion for Dismissal filed by moving parties, and to deny the Motion for Sanctions pursuant to Rule 11.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that plaintiff's Complaint against Summit Health, Ltd., Midway Hospital Medical Center, The Medical Staff of Midway Hospital Medical Center, Mitchell Feldman, August Reader, Arthur N. Lurvey, Richard E. Posell, Jonathan I. Macy, James J. Salz, Gilbert Perlman, Peggy Farber, Mark Kadzielski and Weissburg and Aronson, Inc. shall be and is hereby dismissed without leave to amend.

Dated: October 2, 1987

FERDINAND F. FERNANDEZ
United States District Judge

Presented by:

J. MARK WAXMAN, ESQ.
WEISSBURG AND ARONSON, INC.
Attorneys for Summit Health, Ltd. et al.

APPENDIX 5

[Letterhead]

NOTICE OF APPEAL AND DEPOSIT OF APPEAL FEE

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Simon J. Pinhas, M.D.,
Plaintiff,

v.

Summit Health, Ltd., a corporation; Midway Hospital Medical Center, a California general hospital; The Medical Staff of Midway Hospital Medical Center, an unincorporated association; Mitchell Feldman; August Reader; Arthur N. Lurvey; Richard E. Posell; Jonathan I. Macy; James J. Salz; Gilbert Perlman; Peggy Farber; Mark Kadzielski; Weissburg & Aronson; and State of California Board of Medical Quality Assurance,
Defendants.

CASE NO. 87 03292 FFF (GHKx)

FILED: October 22, 1987

Clerk, U.S. District Court,
Central District of California

NOTICE IS HEREBY GIVEN that plaintiff Simon Pinhas, M.D. hereby appeals to the United States Court of Appeal for the Ninth Circuit from the Order entered on October 9, 1987, granting defendants' Motion to Dismiss.

The parties affected by this Order and their attorneys are: defendants Summit Health, Ltd., Midway Hospital Medical Center, The Medical Staff of Midway Hospital

Medical Center, Mitchell Feldman, August Reader, Arthur N. Lurvey, Richard E. Posell, Jonathan I. Macy, James J. Salz, Gilbert Perlman, Peggy Farber, Mark Kadzielski, and Weissburg & Aronson, by their counsel, Weissburg & Aronson, by J. Mark Waxman, 2049 Century Park East, 32nd Floor, Los Angeles, California 90067 and Simon J. Pinhas, M.D., by his counsel, Lawrence Silver A Law Corporation, by Lawrence Silver, 9100 Wilshire Boulevard, Suite 360 West, Beverly Hills, California 90212 and Blecher & Collins, by Maxwell M. Blecher, 611 West Sixth Street, Suite 2800, Los Angeles, California 90017.

Plaintiff transmits herewith the appeal fee in the sum of $105.00.

DATED: October 21, 1987

LAWRENCE SILVER
A Law Corporation

By: /s/
Lawrence Silver, Attorneys
for Respondent Simon J. Pinhas, M.D.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On December 30, 1987, I served the within Petition for Writ of Certiorari in re: "Simon J. Pinhas, M.D. -v- Summit Health" in the United States Supreme Court, October Term 1987, No. ____;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Mark A. Kadzielski
Weissburg and Aronson, Inc.
Attorneys at Law
32nd Floor, Two Century Plaza
2049 Century Park East
Los Angeles, California 90067-3271

All Parties to be served have been served.

Medical Center, Mitchell Feldman, August Reader, Arthur N. Lurvey, Richard E. Posell, Jonathan I. Macy, James J. Salz, Gilbert Perlman, Peggy Farber, Mark Kadzielski, and Weissburg & Aronson, by their counsel, Weissburg & Aronson, by J. Mark Waxman, 2049 Century Park East, 32nd Floor, Los Angeles, California 90067 and Simon J. Pinhas, M.D., by his counsel, Lawrence Silver A Law Corporation, by Lawrence Silver, 9100 Wilshire Boulevard, Suite 360 West, Beverly Hills, California 90212 and Blecher & Collins, by Maxwell M. Blecher, 611 West Sixth Street, Suite 2800, Los Angeles, California 90017.

Plaintiff transmits herewith the appeal fee in the sum of $105.00.

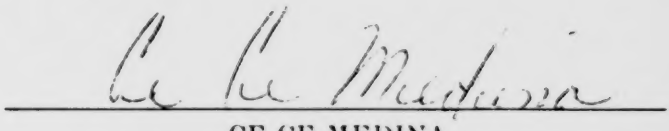
DATED: October 21, 1987

LAWRENCE SILVER
A Law Corporation

By: /s/
Lawrence Silver, Attorneys
for Respondent Simon J. Pinhas, M.D.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on December 30, 1987, at Los Angeles, California



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